SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 243.

EDWARD M. STICKNEY, WILLIAM H. STICKNEY, GEORGE STICKNEY, AND CARRIE STICKNEY; GEORGE STICKNEY BY HIS GUARDIAN AD LITEM OLNEY G. GIBBS, AND CARRIE STICKNEY, BY HER GUARDIAN AD LITEM ROBERT T. SPENCER, APPELLANTS,

vs.

JEANNIE K. STICKNEY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Original Bill. Filed Mar.* 16, 1882.

In the Supreme Court of the District of Columbia, the — Day of March, A. D. 1882. In Equity.

JEANNIE K. STICKNEY, Complainant,
vs.
EDWARD M. STICKNEY, WILLIAM H. STICKNEY, GEORGE STICKNEY, and CARRIE STICKNEY, Defendants. } No. 8087.

To the supreme court of the District of Columbia, holding an equity court for the said District, the complainant says as follows:

First. The complainant is a citizen of the District of Columbia. The defendants, Edward M. Stickney and William H. Stickney, are of lawful age and citizens and residents, respectively, of the States of Iowa and Illinois. The defendants, George and Carrie Stickney, are infants, both over the age of fourteen years, as the complainant is informed and believes and charges, and residents of the State of Iowa, and the defendant, Edward M. Stickney, is their duly appointed guardian.

Second. With an elder William Stickney, the complainant, at the age of twenty-four years, intermarried on the fifteenth day of
2 January, 1852, and continued to be his wife until the 13th day of October, 1881, when he departed this life, intestate, at the city of Washington, in the said District, domiciled therein, leaving the complainant his widow and as his sole heirs-at-law and next of kin three brothers, to wit, John N. Stickney, a citizen of Connecticut and resident of Rockville therein; Thomas G. Stickney, a citizen of Maine and resident of Bangor therein, and Frank H. Stickney, a citizen and resident of the District of Columbia, and the defendants to this bill, who were and are the sole issue of one Moodey Stickney, a brother of the said intestate, but at that time deceased.

Third. On the 11th day of November, 1881, and by an order passed by this court, in the exercise of the probate jurisdiction thereof, the complainant was duly appointed and became and she is still the sole administratrix of the personal estate of her deceased husband. A true copy of her letters as such is annexed to this bill.

Fourth. The personal estate standing or held in the name of the said intestate at the time of his death, and consisting mainly of furniture, stocks, bonds, notes, and cash, and whereof all was in fact within the District of Columbia, was of an aggregate value,
3 from the best and most recent information that the complainant has been able to obtain in the premises, of about $50,000.

And, upon the like information, she avers that the aggregate of his debts due and unpaid at the time of his death amounted to about $23,000, exclusive of the claims of the complainant.

Fifth. The complainant, upon information and belief, avers that nearly the whole of the personal property standing or held in the name of her husband at the time of his death was by him in his

lifetime got and obtained subsequently to the year 1870, with money which was part of her sole and separate estate, which she had acquired as such from her distributive share in the estate left by her father, and which came into the hands of and was held by her husband, as her trustee or agent, and not otherwise, as hereinafter more particularly explained.

Sixth. The complainant, in administering the personal estate, which is yet unsettled, thus standing or held in the name of her husband at the time of his death, has collected certain of the assets and made payment unto certain of the creditors thereof, but has been advised and has deemed it prudent to represent and has, in fact, made known unto this court, exercising the probate jurisdiction thereof, the assertion of her equitable title, in her personal capacity, to the whole of said personal estate, except so far as it may be necessary to apply the same to the payment of the just debts left by her husband, to which payment the complainant, without reference to her legal obligation in the premises, has been disposed and willing and will ever be ready to subordinate and relinquish every claim of her own.

Seventh. The said intestate at the time of his death was technically seized and possessed of the following pieces or parcels of ground situate in the said city of Washington and known and designated as follows: In square numbered one hundred and eighty-two (182), sublots numbered thirty-seven (37) and thirty-eight (38), respectively; in square numbered two hundred and forty-two (242), sublot numbered seventy-two (72); in square numbered three hundred and sixty-five (365), sublots numbered one hundred and thirty-six (136) and one hundred and fifty-six (156), respectively; in square numbered four hundred and forty-eight, part of lots numbered one (1) and from sixty-nine (69) to seventy-three (73), both inclusive; in square numbered five hundred and twenty-three (523), part of lot numbered one (1); in square numbered six hundred and twenty-four (624), sublots numbered forty-one (41) and forty-five (45), respectively; in square numbered eight hundred and ninety-two (892), sublots numbered twenty-one (21) and twenty-two (22), respectively, and in square numbered three hundred and seventy-three (373), part of lot numbered one (1).

With the exception of the sublots in said square numbered one hundred and eighty-two (182), all of the said real estate was improved at the time of the death of the husband of the complainant.

The said sublot in said square numbered two hundred and forty-two (242) had been acquired by the said deceased in his lifetime, subject expressly to a prior encumbrance upon the said sublot to secure an aggregate indebtedness of $10,000; and this indebtedness was afterwards reduced, by payments made thereon by the said intestate in his lifetime, to the sum of $6,000, for which the said sublot still stands encumbered.

This sum of $6,000, though not originally the debt of said intestate nor strictly chargeable upon his personal estate in exoneration of the sublot last above mentioned, was treated by him in his life-

time as suitable to be by him paid, and is included by the complainant among his debts aforesaid.

6 Eighth. The complainant, upon information and belief, avers that the aggregate value of the real estate so held by her husband at the time of his death then was and still is about the sum of $50,000, and that the whole of the said real estate, save as in the next succeeding paragraph of this bill mentioned, was by him got and obtained in his lifetime and after the year 1869 with money which was part of her sole and separate estate, which she had acquired as such from her distributive share in the estate left by her father, and which came into the hands of and was held by her husband as her trustee or agent and not otherwise, as hereinafter more particularly explained.

Ninth. The said part of lot numbered one (1), in square numbered three hundred and seventy-three (373), was acquired by the husband of complainant by descent upon the death, on July 20, 1880, of their only child, intestate. The said sublots in square numbered six hundred and twenty-four (624) were acquired in 1857, though not then nor for some time afterwards, as the complainant is informed and believes, fully paid for by her husband, and not then without, as she believes, the assistance of her father. The complainant is

7 informed and believes and charges that the said parts of lots in said square numbered four hundred and forty-eight (448) were acquired with the proceeds of $10,000 in stock presented to her by her father in his lifetime, by her husband, in September, 1868, and afterwards partly with the assistance of her father and partly, after the death of the latter, from her said separate estate, improved by the erection of a comfortable dwelling, wherein the complainant resided with her husband up to the time of his decease.

Tenth. At the date of the intermarriage of the complainant and the said last-mentioned William Stickney the latter was without fortune or pecuniary resources and dependent for his support upon an annual salary of $1,200, and after the said intermarriage and until the death of the father of the complainant, as hereinafter mentioned, her husband still continued to remain without any other revenue, income, or source of profit save and except from the like salary aforesaid and from the assistance hereinbefore mentioned.

Eleventh. After the death, as hereinafter mentioned, of the father of the complainant her husband, as the complainant is in-

8 formed and believes and charges, had at no time a greater annual revenue or income than $4,500 or $5,000, except as derived or obtained from the sole and separate estate of the complainant, acquired as aforesaid.

Twelfth. Amos Kendall, father of the complainant, departed this life on the 12th day of November, A. D. 1869, at the said city of Washington, whereat he was then domiciled, having by his last will and testament (which was shortly thereafter duly admitted to probate and record in the office of the register of wills for the District aforesaid) devised and bequeathed his estate in manner and form as set forth in a true copy of the said last will and testament

hereunto annexed, marked S. No. 1, and prayed to be taken as part thereof.

Thirteenth. The executors named in the said last will and testament, and whereof the husband of the complainant was one, duly qualified and became and acted as such, and the distributive share of the complainant under the provisions of the said last will and testament, which came in money actually into the hands of the said executors, was the sum of $80,348.24. For this sum of money the complainant from time to time receipted unto her husband and the said Robert C. Fox, as executors aforesaid, and her receipts
9 were by them produced before and accepted by the proper probate tribunal in said District in the adjustment of the accounts of the said executors.

Fourteenth. While the complainant thus receipted, from time to time, unto her husband and the said Robert C. Fox, as executors aforesaid, for her said distributive share in the estate of her father, no portion thereof (with the exception of the sum of $1,000 paid by her husband on her order on the 23d day of December, 1879) ever was in fact paid to her or to her order, but between the 22d day of November, 1869, and the 21st day of April, 1880, both exclusive, the whole of her net distributive share in the estate of her father, being the said sum of $80,348.24, was in cash retained by and ever afterwards remained under the control and custody of her husband and by him managed and invested in his own name. How, except as hereinbefore stated, the said sum of money was so invested by her husband, or what income, revenue, or profit was by him received therefrom, the complainant does not know, but, upon information and belief, avers that upon the said sum of money so from time to time received by her husband an average annual interest or
10 profit of not less than eight per centum might and with reasonable care in the management of the said fund ought to have been obtained by her husband.

Fifteenth. The complainant never at any time made to her husband any gift of or renounced in his favor her sole and exclusive property in the said sum of $80,348.24, but always, during the lifetime of her husband, confidently believed and supposed that the said sum of money, with the exception of the said sum of $1,000 mentioned in the next preceding paragraph, was wholly retained, held, managed, and invested by her husband, as her trustee or agent, for her sole and exclusive benefit and as her separate estate. In this confidence and belief, from considerations of delicacy and wifely forbearance, and in the consciousness of her own entire inexperience in the affairs of business, the plaintiff willingly suffered her husband to continue in the possession and management of her said separate estate, without entering into particular inquiries or soliciting from him any explanation of the actual manner in which he was managing or dealing with such her estate. Nevertheless, the complainant, from time to time and upon receipting unto the
11 said executors of the estate of her father for her distributive share therein, as hereinbefore mentioned, requested her husband to invest in her name and hold for her use and benefit the

money for which she so receipted; and though, as the complainant admits, her husband never made to her any express promise to respect her wishes in that behalf, nevertheless, as she avers, he did not on any occasion decline to accede to such her request, or express any disapproval therewith, or question the propriety thereof, and the complainant was left and remained under the confident belief that with such her request her husband had from time to time in fact fully complied; and the complainant avers that her husband, during his lifetime, was at all times fully aware that the complainant rested under the full conviction and belief, both that the money so by him received of and from her said separate estate continued, *inter esse*, to be her own, and that her husband asserted and could interpose no adverse claim thereto.

Sixteenth. It was not until after the decease of her husband that the complainant learned and for the first time, an- then only
12 from an examination of his private papers and effects, or had any reason to suspect or imagine, and the fact was, that her said separate estate had been held, managed, invested, and employed by her husband in his lifetime solely in his individual name and without distinguishing it from such means as were actually his own.

Seventeenth. The complainant is fully persuaded and she verily believes and charges that it was at no time and never entered into the design, purpose, intention, or disposition of her husband in his lifetime to question or disavow, and much less to defeat, her paramount and exclusive property, *inter esse*, in the said sum of $80,348.24, but that he ventured to depart from her said wishes and request in respect thereof, and to hold, manage, and invest the said fund in his individual name from views of business, convenience, and utility touching the management and investment of the said sum of money from motives of genuine kindness and consideration towards the complainant, to whom he was deeply attached, for her personal accommodation and relief and in order to obviate the necessity
13 of her individual participation in every dealing or transaction in reference to the fund which he held in his hands.

Eighteenth. The complainant says that the illness which terminated the life of her husband was of but short duration, and, until a few hours before his dissolution, had occasioned neither apprehension to himself nor alarm to the complainant or his friends. On the day immediately preceding his death, though remaining in bed, he still attended to matters of business, considered his condition as much improved, and expressed entire confidence in his speedy return to the outside world; and it was not until his departure was already at hand that this confidence was relinquished or shaken; and the complainant is persuaded and she verily believes and charges that but for such the circumstances attending the last illness of her husband he would have left behind him some formal and express recognition and declaration of her right, *inter esse*, to have resort to or receive the whole of the property, real and personal, standing or held in his name at the time of his death in satisfaction or as
14 the product of her said separate estate so by him received, managed, and invested in his lifetime as aforesaid.

Nineteenth. The complainant says that shortly after the death of her husband his three surviving brothers mentioned in the second paragraph of this bill immediately recognized her sole beneficial and equitable interest in the real and personal estate standing or held in his name at the time of his death, and in a manner highly generous and gratifying to the complainant and honorable and becoming to themselves made and executed and delivered unto her the certain releases and conveyances, whereof true copies are hereunto annexed, marked Exhibit S. No. 2, and prayed to be taken as part of this bill; and afterwards, in conjunction with their wives and to extinguish as to the latter their possible claims to dower contingent, the further assurances whereof true copies are herewith filed, marked Exhibit S. No. 3, and prayed to be taken as part of this bill; and the complainant avers that, apartfrom such interest as she has in or such claims as she may be able to establish against the said estate so standing or held in the name of her husband at the time of his death, she is, in effect, utterly penniless.

15 Twentieth. The complainant was and is most sincerely reluctant to enter into litigation with any of the kindred of her deceased husband, and in order to obviate the necessity of resorting to a measure so uncongenial to her feelings endeavored to obtain from and proposed to the two defendants of lawful age their renunciation and release of all claim and pretension on their part to the estate standing or held in the name of her husband at the time of his death in favor of the complainant in consideration of a reasonable compensation or recompense to be made by the complainant unto themselves and of her full recognition of their infant codefendants as lawful participants in the said estate as heirs-at-law and next of kin of her husband; but the said two adult defendants defeated her said endeavor and declined and rejected her said proposal.

Twenty-first. The complainant is advised and charges that for the said sum of $80,348.24, no portion whereof, except the said sum of $1,000, has ever been paid or returned or accounted for unto her in any manner whatever, she is, as against the defendants, claiming only as volunteers, a creditor against the estate so standing
15a or left by her husband at the time of his death, and that the sum for which she is such creditor is much in excess of the entire value of the said estate after deducting therefrom the amount of the indebtedness to other persons of her husband at the time of his death, as set forth in the fourth paragraph of this bill.

Twenty-second. The complainant is advised and charges that as to the sum of $79,348.24 and as against the defendants claiming only as volunteers her husband is to be regarded and considered as, in his lifetime and up to his death, her trustee or agent, and the estate standing or held in his name at the time of his decease liable unto the complainants as against the defendants so claiming as aforesaid for the said sum of money.

Twenty-third. The complainant further states that if she has misconceived her rights in the premises and is not, in equity, entitled as against the defendants to be so reimbursed the said sum of money out of the said estate she will punctually and faithfully pay and

account for unto the defendants their respective distributive shares in the personal property embraced in the said estate, in the due course of her administration thereof as administratrix
16 aforesaid, and fully and cheerfully recognize the right of the defendants to share, as heirs-at-law of her husband, in the realty embraced in the said estate, subject to her claim of dower therein and her rights as grantee under the several releases and conveyances mentioned in the nineteenth paragraph of this bill.

Twenty-fourth. And in case the complainant has so misconceived her rights it is her desire, in order to carry into practical effect such her recognition of the rights of the defendants in the said real estate, and in the event that such desire may be gratified agreeably to the jurisdiction and practice of equity, but not otherwise, under this her present bill, upon proceedings to be had thereunder, to have the said real estate either divided between the complainant and the defendants according to their several and respective interests therein, or else, in the event such division cannot be made without loss or injury to the parties entitled, sold agreeably to the statute in such case made and provided, and the proceeds equitably distributed between the complainant and the defendants.

17 And the complainant, who now expressly waives an answer, under oath, to each and every matter or thing in this bill contained of and from the defendants and each of them, therefore prays as follows:

1. That upon process against the defendants, returned unfound, publication may be awarded against them.

2. That as to the infant defendants, such further order or proceeding as may be necessary to subject their rights in the premises to the jurisdiction and decree of this — may be duly made or had, and particularly that a guardian *ad litem* may be appointed to protect their interests.

3. That as against all and every of the defendants the complainant may be decreed to be and stand a creditor upon the real and personal estate held in the name of her husband at the time of his death for the sum of $79,348.24 by him, in his lifetime, received and held as her trustee or agent, and the said estate, as against the defendants and each of them, made liable and subjected to the payment of the sum aforesaid.

4. Or if the complainant hath misconceived her right to the
18 relief last above specially prayed, that in such event, and provided it may so be decreed agreeably to the jurisdiction and practice of equity, but not otherwise, under this her present bill and the case made thereunder, the said real estate may be either divided between the complainant and the defendants according to their several and respective interests therein, if such division can be effected without loss or injury to such interests aforesaid, or else sold and the proceeds equitably distributed between the parties entitled.

5. And that the complainants may have such other and further relief as the nature of *their* case may require and to the court shall seem meet.

To the end whereof the complainant prays process against the

defendants, Edward M. Stickney and William H. Stickney, respectively, and against the defendants, George Stickney and Carrie Stickney, infants, respectively.

The defendants to this bill are Edward M. Stickney, William H. Stickney, George Stickney, and Carrie Stickney.

JEANNIE K. STICKNEY.

19 I do solemnly swear that I have read over the above bill by me subscribed, and know the contents thereof; that the facts therein stated upon my own knowledge are true, and that the facts therein stated upon my information and belief I believe to be true.

JEANNIE K. STICKNEY.

Subscribed and sworn to before me this sixteenth day of March, 1882.

[SEAL.] THOMAS R. JONES,
Notary Public.

JOHN SELDEN,
Counsel for Complainant.

DISTRICT OF COLUMBIA, *To wit:*

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

The United States of America to all persons to whom these presents shall come, Greeting:

Know ye that on the 11th day of November, in the year of our Lord 1881, administration of all the goods, chattels, and credits of William Stickney, late of the District of Columbia, deceased, was, by the supreme court of the District of Columbia aforesaid,
20 granted and committed unto Jeannie K. Stickney, the said Jeannie K. Stickney, as administratrix of said William Stickney, deceased, having first executed a bond to the United States, with two good sureties approved by the said court, in the penalty of ninety thousand dollars, conditioned for the faithful performance of the trust in her reposed, and having also taken the required oath.

Witness Alexander B. Hagner, justice, holding the special term of the said supreme court for orphans' court business, this 13th day of March, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and sixth.

Test:

[SEAL.] W. J. RAMSDELL,
Register of Wills for the District of Columbia.

EXHIBIT S. No. 1. Filed Mar. 16, 1882.

Last Will and Testament of Amos Kendall.

In the name of God, amen.

I, Amos Kendall, of the county of Washington, in the District of

Columbia, being of sound and disposing mind, memory, and
21 understanding, do make and publish this my last will and testament in manner and form following—that is to say:

Item 1. I will and bequeath to my respected nephew, John E. Kendall, three thousand dollars ($3,000), in token of my gratitude to him for placing all his pecuniary means at my disposal at a time of extreme embarrassment.

Item 2. I will and bequeath to my grandson, Edwin K. Culver, ten thousand dollars ($10,000), and also all the lands of which I may die possessed in the State of Arkansas, provided that any advances I may have made to him in my lifetime shall be deducted from the ten thousand dollars aforesaid.

Item 3. My large family Bible, with my name upon the cover, I give to my oldest daughter, Mary A. Greene, born Mary Ann Kendall.

Item 4. To my daughter, Mrs. Jane E. Stickney, born Jane E. Kendall, I restore the large Bible given by her and her husband to her late mother in 1852, and I furthermore bequeath to her my honored father's family Bible, to be securely kept for the inspection of any of his descendants who may desire to see it.

Item 5. To my daughter-, Fanny Fox and Marion Bab-
22 cock, born Fanny Kendall and Marion Kendall, I give and bequeath such souvenirs as each of them may select from any books, pictures, or personal effects left by me at the time of my decease not exceeding in value one hundred dollars.

Item 6. All my manuscripts, including letters and copies of letters sent and received, bound and unbound, except as hereinafter provided, I will and bequeath to my son-in-law, William Stickney, provided that if he shall use said manuscripts or letters or any part of them in any publication or shall in any way derive a pecuniary profit therefrom he shall account for three-fourths of said profits to my four daughters hereinafter named as part and parcel of my estate, provided, however, that all letters addressed to me by my daughters or my sons-in-law or nephews or nieces or grandchildren shall be returned to the writers if living; and, if not, to their nearest of kin.

Item 7. The residue of my property, real and personal, and all my rights and claims, legal and equitable, pertaining to property I will and bequeath to my beloved daughters, Mary A. Green, Jane E. Stickney, Fanny Fox, and Marion Babcock, born, respectively,
Mary A. Kendall, Jane E. Kendall, Fanny Kendall, and
23 Marion Kendall, to be equally divided between them, subject, however, to the payment of my funeral expenses and the discharge of all my debts and pecuniary obligations.

Item 8. I hereby appoint my sons-in-law, William Stickney and Robert C. Fox, executors of this my last will and testament, and it is my will that they shall proceed as follows in the settlement of my estate, viz:

They shall give bonds for the faithful performance of their duties in such sums as may be required by the orphans' court for the District of Columbia.

They shall promptly make out a schedule of all my property of whatever character and file it in said orphans' court.

They shall proceed to sell so much thereof as may be necessary, in addition to cash on hand and interest on Government or other bonds becoming due within the current six months, as may be necessary to pay my funeral expenses and specific legacies and discharge all my debts and pecuniary obligations.

It is my will that any Government or railroad securities that may remain after the aforesaid claims shall have been discharged
24 shall not be sold by my executors, and that any debts due to me by any of my said daughters or their husbands shall not be required to be paid in money, but said securities, reserving the interest for the current six months, shall be divided among my daughters, and those debts shall be adjusted in the following manner, viz: Said bonds shall be valued at their market rate in New York or at other points where the interest is payable, and to their aggregate value, thus ascertained, shall be added the amount of said debts, and the sum thus made up shall be divided equally among my said four daughters, each daughter receiving as a part of her share an acquittance of the debt of herself and husband, if any.

All or any portion of my remaining real estate may in like manner be divided without sale among my four daughters aforesaid upon their unanimous consent to any such division which may be proposed; but if such unanimous consent cannot be obtained, then my executors shall proceed to sell such real estate on such terms as may in their judgment be most conducive to the interest of my
25 said daughters, and divide the proceeds equally between them.

If my executors shall disagree in reference to any matter pertaining to the execution of this will they shall appoint an umpire, whose decision of the points in controversy shall be final.

Item 9. Should any of my four daughters aforesaid die before my own decease, then her share of my estate shall go to her child or children, if she have any; and if she have no child, it shall be equally divided among her surviving sisters.

Item 10. My said executors will proceed with all possible dispatch in the settlement of my estate, shall render their accounts at least once a year, and shall be entitled to such reasonable compensation for their services as the orphans' court may award.

Having now made arrangements for the disposition of my earthly substance, I pray God, the Great Giver, to make it a blessing and not a curse to my children, and henceforth I stand ready at His will to surrender my soul into His hands, relying on His mercy through Christ for the pardon of the many transgressions I may have
26 committed during a protracted life, and for an eternity of happiness in the society of the Redeemer and redeemed.

And, lastly, I hereby revoke and annul all former wills by me heretofore made, and ratify and confirm this, and none other, to be my last will and testament.

In testimony whereof I have hereunto set my hand and affix- my

seal this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and sixty-eight.

AMOS KENDALL. [WAFER SEAL.]

Signed, sealed, published, and declared by Amos Kendall, the above-named testator, as and for his last will and testament, in the presence of us, who, at his request, in his presence and in the presence of each other, have subscribed our names as witnesses thereto.

EDM. F. BROWN.
ROBERT W. FENWICK.
ALBERT R. SWETT.

[U. S. revenue stamps, $162.50.]

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

Orphans' Court.

NOVEMBER 16TH, 1869.

27 This day appeared Edmund F. Brown and Albert R. Swett, two of the subscribing witnesses to the aforesaid last will and testament of Amos Kendall, late of Washington county aforesaid, deceased, and severally made oath on the Holy Evangels of Almighty God that they did see the testator therein named sign and seal said will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound disposing mind, memory, and understanding and capable of executing a valid deed or contract, and that their names as witnesses to the aforesaid will were signed in the presence and at the request of the testator and in the presence of Robert W. Fenwick, the other subscribing witness ther-to.

Test: A. WEBSTER,
Register of Wills.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

Orphans' Court.

NOVEMBER 19TH, 1869.

28 This day appeared Robert W. Fenwick, one of the subscribing witnesses to the aforegoing last will and testament of Amos Kendall, late of Washington county aforesaid, deceased, and solemnly made oath on the Holy Evangels of Almighty God that, to the best of his knowledge and belief, he did see the testator therein named sign and seal said will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of his apprehension, of sound and disposing mind, memory, and understanding and capable of executing a valid deed or contract, and that his name as witness to the aforesaid will was signed in the presence and at the

request of the testator and in the presence of Edmund F. Brown and Albert R. Swett, the other subscribing witnesses thereto.

Test: A. WEBSTER,
Register of Wills.

DISTRICT OF COLUMBIA, *To wit:*

I, Hiram J. Ramsdell, register of wills for the District of Columbia, do hereby certify that the foregoing is a true copy of the original will of Amos Kendall, deceased, and the probates thereto, filed and recorded in the office of the register of wills for the District
29 of Columbia aforesaid, and also that the said will, after having been proven by the witnesses whose names appear in the foregoing probates, was, by order of the late orphans' court of the District of Columbia, holding a special term for orphans' court business, duly admitted to probate and record on the 20th day of November, A. D. one thousand eight hundred and sixty-nine.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans' court business, this 13th day of March, anno Domini 1882.

[SEAL.] H. J. RAMSDELL,
Register of Wills for the District of Columbia.

EXHIBIT S. No. 2. Filed Mar. 16, 1882.

(Copy.)

Release. John N. Stickney et al. to Jennie K. Stickney.

Recorded October 18th, 1881, 10.20 a. m., Liber 986, folio 81 *et seq.*

This indenture, made this seventeenth day of October, in the year of our Lord one thousand eight hundred and eighty-one, by and between John N. Stickney, of Rockville, Connecticut, Thomas
30 G. Stickney, of Bangor, Maine, and Frank H. Stickney, of the city of Washington, in the District of Columbia, of the first part, and Jennie K. Stickney, of the said city of Washington, in the said District, of the second part:

Whereas William Stickney, of the said city of Washington, in the said District, hath lately departed this life intestate, leaving in his own individual name considerable real and personal estate by him acquired in his lifetime from the proceeds of the sole and separate estate of the said party of the second part, his now widow, and in equity by him held in trust for her; and

Whereas the said parties of the second part are heirs-at-law and next of kin of the said William Stickney, deceased, and are desirous voluntarily and without lawsuit or litigation of recognizing the beneficial interest of the said party of the second part in and to the entire estate of the said deceased, and of releasing, conveying, and confirming unto her all the right, title, interest, and estate and all the claim and demand, whether at law or in equity, of them, the said parties of the first part, in and to the real and personal
31 estate left in his individual name by the said William Stickney at the time of his decease:

Now, therefore, this indenture witnesseth: That, for and in consideration of the premises and of the sum of one dollar to each of them in hand paid by the said party of the second part, the said parties of the first part have remised, released, quitclaimed, and conveyed, and do by these presents remise, release, quitclaim, and convey, unto the said party of the second part, her heirs and assigns, all the right, title, interest, estate, claim, and demand, whether at law or in equity, of them, the said parties of the first part, in and to the real and personal estate of the said William Stickney, deceased:

To have and to hold the interest and estate, right, title, claim, and demand hereby released, quitclaimed, and conveyed unto the sole use of the said party of the second part, her heirs and assigns, forever.

In testimony whereof the said — of the first part have hereunto set their hands and affixed their seals the day and year first hereinbefore written.

J. N. STICKNEY. [SEAL.]
THOS. G. STICKNEY. [SEAL.]
F. H. STICKNEY. [SEAL.]

Signed, sealed, and delivered in the presence of—
THOMAS R. JONES.

32 DISTRICT OF COLUMBIA, *City of Washington:*

I, Thomas R. Jones, a notary public in and for the District of Columbia, do hereby certify that John N. Stickney, Thomas G. Stickney, and Frank H. Stickney, parties to a certain deed bearing date on the seventeenth day of October, A. D. 1881, and hereto annexed, personally appeared before me, in the city of Washington, this day, the said John H. Stickney, Thomas G. Stickney, and Frank H. Stickney being well known to me as the persons who executed the said deed, and severally acknowledged the same to be their act and deed.

[NOTARIAL SEAL.] THOMAS R. JONES,
Notary Public.

This is to certify that the within is a true and verified copy of a deed as recorded in Liber No. 986, folio 81 *et seq.*, one of the land records for the District of Columbia.

Washington, D. C., March 13th, 1882.

[SEAL.] GEORGE F. SCHAYER,
Dep. Recorder.

33 EXHIBIT S. No. 3. Filed Mar. 16, 1882.

This indenture, made this twenty-second day of October, in the year of our Lord one thousand eight hundred and eighty-one, by and between John N. Stickney and Mary S. Stickney, his wife, of Rockville, in the State of Connecticut; Thomas G. Stickney and —— ——, his wife, of Bangor, in the State of Maine, and Frank H.

Stickney and Elizabeth L. Stickney, his wife, of the city of Washington, in the District of Columbia, of the first part, and Jeannie K. Stickney, of the city of Washington, in the said District, of the second part:

Whereas William Stickney, of the said city of Washington, in the District aforesaid, lately therein departed this life intestate, leaving nominally in his right a considerable amount of real and personal estate;

And whereas the real and personal estate whereof the said William Stickney died seized and possessed had been acquired by him in his lifetime from the proceeds of the sole and separate estate of the said party of the second part, his then wife and now widow, and was in his lifetime and at the time of his decease in equity by him held in trust and for the sole benefit and advantage of the said party of the second part;

34 And whereas the said John N. Stickney, Thomas G. Stickney, and Frank H. Stickney are, amongst others, heirs-at-law and next of kin of the said William Stickney, deceased;

And whereas the said parties of the first part are desirous of recognizing the exclusive right of the said party of the second part to have, hold, and possess the said real and personal estate left by the said intestate at the time of his death, and of releasing and conveying unto the said party of the second part without lawsuit or controversy all the right, title, interest, estate, claim, and demand, whether at law or in equity, of them, the said parties of the first part, in and to all the real and personal estate left by the said intestate at the time of his death:

Now, therefore, this indenture witnesseth: That the said parties of the first part, for and in consideration of the premises and of the sum of one dollar in lawful money of the United States to them in hand paid by the said party of the second part at and before the ensealing and delivery of these presents (the receipt whereof

35 is hereby acknowledged), have remised, released, quitclaimed, and conveyed, and do by these presents remise, release, quitclaim, and convey, unto the said party of the second part, her executors, administrators, heirs, and assigns, all the right, title, interest, estate, claim, and demand, whether at law or in equity, of them, the said parties of the first part, in and to all the real and personal estate left by the said William Stickney at the time of his death; to have and to hold all the right, title, interest, estate, claim, and demand, whether at law or in equity, of them, the said parties of the first part, in and to the real and personal estate left by the said William Stickney at the time of his death unto the sole use, benefit, and behoof of the said party of the second part, her executors, administrators, heirs, and assigns, forever.

In testimony whereof the said parties of the first part have here-

unto set their hands and affixed their seals the day and year first hereinbefore written.

JOHN N. STICKNEY. [SEAL.]
MARY S. STICKNEY. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]
FRANK H. STICKNEY. [SEAL.]
ELIZABETH L. STICKNEY. [SEAL.]

Signed, sealed, and delivered in the presence of—
E. C. CHAPMAN,
As to John N. & Mary S.
THOMAS R. JONES,
As to F. H. S.
THOMAS R. JONES,
As to E. L. S.

36 DISTRICT OF COLUMBIA, *City of Washington:*

I, Thomas R. Jones, a notary public in and for the District of Columbia, do hereby certify that Frank H. Stickney and Elizabeth L. Stickney, his wife, parties to a certain deed bearing date on the twenty-second day of October, A. D. 1881, and hereto annexed, personally appeared before me, in the city of Washington, in the said District, the said Frank H. Stickney and Elizabeth L. Stickney, his wife, being personally well known to me as the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Elizabeth L. Stickney, the wife of the said Frank H. Stickney, being by me examined privily and apart from her husband and having the said deed fully explained to her by me, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this twenty-second day of October, A. D. 1881.

[Seal Thomas R. Jones, Notary Public, District of Columbia.]

THOMAS R. JONES,
Notary Public.

37 STATE OF CONNECTICUT, } ss:
County of Tolland, }

ROCKVILLE, *October:*

I, E. C. Chapman, a notary public in and for the county of Tolland, in the State of Connecticut, do hereby certify that John N. Stickney and Mary S. Stickney, his wife, parties to a certain deed bearing date on the twenty-second day of October, A. D. 1881, and hereto annexed, personally appeared before me, in the said county of Tolland, in the State of Connecticut, the said John N. Stickney and Mary S. Stickney, his wife, being personally well known to me as persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary S. Stickney, wife of the said John N. Stickney, being by me examined privily and apart

from her husband and having the said deed fully explained to her by me, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this twenty-fifth day of October, A. D. 1881.

[Seal E. C. Chapman, Notary Public, Rockville, Conn]

E. C. CHAPMAN,
Notary Public.

38 STATE OF CONNECTICUT, } ss:
County of Tolland, }

I, Erwin O. Dimock, clerk of the superior court in and for the county of Tolland, in the State of Connecticut, do hereby certify that E. C. Chopman, before whom was made and taken the next preceding acknowledgment, was at the time of the taking and making of the said acknowledgment and of the giving of his above certificate in fact a notary public in and for the county of Tolland, in the State of Connecticut, duly qualified and commissioned, and that I am by law the officer in the said county of Tolland, in the said State of Connecticut, having cognizance of the facts in this my own certificate set forth.

Given under my hand and the seal of my office this 25th day of October, A. D. 1881.

[COURT SEAL.] ERWIN O. DIMOCK, *Clerk.*

Release. John N. Stickney et als. to Jeannie K. Stickney.

1 P. M.

Received for record November 28, 1881, and recorded in
39 Liber 990, folio 128 *et seq.*, one of the land records of the District of Columbia, and examined by Geo. F. Schayer, dep. recorder.

This is to certify that the within is a true and certified copy of a deed as recorded in Liber No. 990, folio 128 *et seq.*, one of the land records for the District of Columbia.

Washington, D. C., March 15th, 1882.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder.

This indenture, made this twenty-second day of October, in the year of our Lord one thousand eight hundred and eighty-one, by and between Thomas G. Stickney and Elizabeth G. Stickney, his wife, of Bangor, in the State of Maine, of the first part, and Jeannie K. Stickney, of the city of Washington, District of Columbia, of the second part:

Whereas William Stickney, of the said city of Washington, in the District aforesaid, lately therein departed this life intestate; and whereas the said Thomas G. Stickney is, amongst others, one of the heirs-at-law and next of kin of the said William Stickney, deceased;

and whereas the said parties of the first part are desirous of
40 recognizing the exclusive right of the said party of the second part to have, hold, and possess the said real and personal estate left by the said intestate at the time of his death and of releasing and conveying unto the said party of the said part without law suit or controversy all the right, title, interest, estate, claim, and demand, whether at law or in equity, of them, the said parties of the first part, in and to all the real and personal estate left by the said intestate at the time of his death:

Now, therefore, this indenture witnesseth that the said parties of the first part, for and in consideration of the premises and of the sum of one dollar in lawful money of the United States to them in hand paid by the said party of the second part at and before the ensealing and delivery of these presents (the receipt thereof is hereby acknowledged), have remised, released, quitclaimed, and conveyed, and do by these presents remise, release, quitclaim, and convey, unto the said party of the second part, her executors, administrators, heirs, and assigns, all the right, title, interest, estate, claim, and demand, whether at law or in equity, of them, the
41 said parties of the first part, in and to all the real and personal estate left by the said William Stickney at the time of his death; to have and to hold all the right, title, interest, estate, claim, and demand, whether at law or in equity, of them, the said parties of the first part, in and to the real and personal estate left by the said William Stickney at the time of his death unto the sole use, benefit, and behoof of the said party of the second part, her executors, administrators, heirs, and assigns, forever.

In testimony whereof the said parties of the first part have hereunto set their hands and affixed their seals the day and year first hereinbefore written.

THOMAS G. STICKNEY. [SEAL.]
ELIZABETH G. STICKNEY. [SEAL.]

STATE OF MAINE, }
County of ——, } *ss:*

I, F. H. C. Reynolds, a notary public in and for the county of Penobscot, in the State of Maine, do hereby certify that Thomas G. Stickney and Elizabeth G. Stickney, his wife, parties to a certain deed bearing date on the twenty-second day of October, A. D. 1881,
and hereto annexed, personally appeared before me in the
42 said city of Bangor and county of Penobscot, State of Maine, the said Thomas G. Stickney and Elizabeth G. Stickney, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and said Elizabeth G. Stickney, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same and that she wished not to retract it.

Given under my hand and notarial seal this 25th day of November, A. D. 1881.

F. H. C. REYNOLDS, [NOTARIAL SEAL.]
Notary Public.

STATE OF MAINE,
County of Penobscot, } ss:

I, Ruel Smith, clerk of the supreme judicial court in and for the county of Penobscot, in the State of Maine, do hereby certify that F. H. C. Reynolds, before whom was made and taken the next preceding acknowledgment, was at the time of the taking and making of the said acknowledgment and of the giving of his above
43 certificate in fact a notary public in and for the county of Penobscot, in the State of Maine, duly qualified and commissioned, and that I am by law the officer in the said county of Penobscot, in the said State of Maine, having cognizance of the facts in this my own certificate set forth.

Given under my hand and the seal of my office this twenty-fifth day of November, A. D. 1881.

[COURT SEAL.] RUEL SMITH, *Clerk.*

Deed. Thomas G. Stickney et ux. to Jeannie Stickney.

1 P. M.

Received for record November 28th, 1881, and recorded in Liber No. 990, folio 130 *et seq.*, one of the land records for the District of Columbia ,and examined by—

GEO. F. SCHAYER,
Dep. Recorder.

This is to certify that the within is a true and verified copy of a deed as recorded in Liber No. 990, folio 130 *et seq.*, one of the land records for the District of Columbia.

Washington, D. C., March 15, 1882.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder.

44 *Subpœna. Issued Mar.* 16, 1882.

In the Supreme Court of the District of Columbia, March 16, 1882.

JEANNIE K. STICKNEY, Complainant,
against
E. M. STICKNEY, Defendant. } No. 8087, Equity Docket 22.

The President of the United States to Edward M. Stickney, William H. Stickney, George Stickney, Carrie Stickney, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the original bill under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk, &c.*
By R. J. MEIGS, JR.,
Ass't Clerk.

Marshal's Return.

Not found, the defendants.
March 17, 1882. C. E. HENRY, *Marshal.*

45 *Order of Publication. Filed Mar.* 18, 1882.

In the Supreme Court of the District of Columbia, the 18th Day of March, 1882. In Equity.

JEANNIE K. STICKNEY, Complainant,
vs.
EDWARD M. STICKNEY, WILLIAM H. STICKNEY, GEORGE STICKNEY, and CARRIE STICKNEY, Defendants. } No. 8087.

On motion of the complainant, by Mr. Selden, her solicitor, and it appearing to the court that a subpœna has been regularly issued against each of the defendants and duly returned "not to be found," and that the defendants are non-residents of the District of Columbia, it is, this 18th day of March, 1882, ordered that the defendants severally cause their appearance to be entered herein on or before the first rule day occurring forty day- after this day; otherwise the cause will be proceeded with as in case of default: Provided, a copy of this order be published as well in the "Washington Law Reporter" as in "The Evening Star" newspaper once a week for three successive weeks previous to the said rule day.

A. B. HAGNER, *Asso Justice.*

46 *Proof and Copy of Publication in Evening Star. Filed April* 21, 1882.

G. W. Adams, pres't S. H. Kauffman, sec. & treas.

WASHINGTON, D. C., 18 *April*, 1882.

John Selden to The Evening Star Newspaper Co., Dr.

To advertising in The Evening Star as follows:

M'ch 20. Equity notice 8087, 24 li., 1aw3 ..... 10 80

Received payment for Co.

H. L. ADAMS, *B'k.*

Certificate of Publication.

CITY AND COUNTY OF WASHINGTON, *District of Columbia,* } *ss:*

On this 18th day of April, A. D. one thousand eight hundred and eighty-two, personally appeared before me, a notary public in and for the city and county aforesaid, Geo. W. Adams, who, being duly sworn according to law, declares that he is one of the proprietors and publishers of The Evening Star, a daily newspaper published

in the city and county of Washington, District of Columbia, and that the advertisement, of which the annexed is a true copy, was published on the following dates: Once a week March 20, 27, April 3.

GEO. W. ADAMS.

Sworn and subscribed to before me this 18th day of April, A. D. eighteen hundred and eighty-two.

[SEAL.] JOHN T. C. CLARK,
Notary Public.

47 In the Supreme Court of the District of Columbia the 18th Day of March, 1882. In Equity.

JEANNIE K. STICKNEY, Complainant,
vs.
EDWARD M. STICKNEY, WILLIAM H. STICKNEY, GEORGE STICKNEY, and CARRIE STICKNEY, Defendants. } No. 8087.

On motion of the complainant, by Mr. Selden, her solicitor, and it appearing to the court that a subpœna has been regularly issued against each of the defendants and duly returned "not to be found," and that the defendants are non-residents of the District of Columbia, it is, this 18th day of March, 1882, ordered that the defendants severally cause their appearance to be entered herein on or before the first rule day occurring forty days after this date; otherwise the cause will be proceeded with as in case of default, provided a copy of this order be published as well in the "Washington Law Reporter" as in "The Evening Star" newspaper, once a week for three successive weeks previous to said rule day.

A. B. HAGNER,
Associate Justice.

A true copy.
Teste:
R. J. MEIGS, *Clerk*,
By A. J. CLANCY, *Ass't Clerk.*

M 20–1aw3w

48 *Proof of Publication in Wash'g. Law Reporter. Filed Apr.* 21, 1882.

Washington Law Reporter, a journal of legal intelligence, published every Wednesday; $3.00 per annum, in advance; single copies, 25 cents.

A. H. Jackson, editor; John L. Ginck, publisher.

631 F STREET, WASHINGTON, D. C., *Apr. 5th*, 1882.

Mr. John Selden, sol'r, to Washington Law Reporter, 631 F street, Dr.

To pub. abs. def. notice, Stickney *vs.* Stickney *et al.*..... $5 00
Received payment.

JOHN L. GINCK,
D. M. O.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

On this 5th day of April, A. D. 1882, personally appeared before me, the undersigned, a U. S. commissioner in and for the district aforesaid, John L. Ginck, being personally well known to me, and made oath in due form of law to the following statement, viz:

That affiant is the publisher of the "Washington Law Reporter," a newspaper published in the city of Washington, D. C.; that the annexed notice was published in said "Washington Law Reporter" once a week for three successive weeks as follows: Mar. 22nd, 29th, & Apr. 5, 1882.

JOHN L. GINCK.

Sworn and subscribed before me the day and year above written.

[SEAL.] LUCIEN O'BRIEN,
United States Commissioner.

49 *Order for Commission to Take Answer of Infant Defendants. Filed April* 24, 1882.

In the Supreme Court of the District of Columbia, the 24th Day of April, 1882. In Equity.

JEANNIE K. STICKNEY
vs.
EDWARD M. STICKNEY *et al.* } No 8087.

On motion of the complainant, and it appearing to the court that the commission heretofore issued in this cause for taking the answer by guardian *ad litem* of the infant defendants has been returned unexecuted on account of the removal of the said infants from the town of Aurora, in the State of Iowa; and it further appearing to the court that the defendant, George Stickney, is now residing at the city of Chicago, in the State of Illinois, and the defendant, Carrie Stickney, at the town of Lyons, in the State of Iowa, it is, this 24th day of April, 1882, ordered that a commission do issue unto Ephraim H. Denison, German D. D. Wyatt, and James M. Jeffrey, or any two of them, of the said city of Chicago, to go to the said infant defendant, George Stickney, and appoint a guardian for the said in-
50 fant for the purpose of answering and defending this suit, and authorizing them or any two of them to take such answer and to return the same into the court; and that a commission do issue unto J. H. Potts, G. W. Ashton, and Geo. W. Parker, or any two — them, of the said town of Lyons, to go to the said infant defendant, Carrie Stickney, and appoint a guardian for the said infant defendant for the like purpose and with the like authority aforesaid.

A. B. HAGNER,
Asso. Justice.

Appearance of E. C. Weaver. Filed May 2, 1882.

In the Supreme Court of the District of Columbia.

JENNIE K. STICKNEY, *Pl'tf,*
vs.
E. M. STICKNEY *et al., Def't-.* } No. 8087, Equity Docket 22.

The clerk will please enter my appearance in the above-entitled cause as attorney for all defendants.

E. C. WEAVER,
Att'y for Def'ts.

51 *Commission & Answer by Guardian of Carrie Stickney. Filed May 19, 1882.*

In the Supreme Court of the District of Columbia, the 24th Day of April, 1882. In Equity.

JEANNIE K. STICKNEY
vs.
EDWARD M. STICKNEY *et al.* } No. 8087, Docket 22.

The President of the United States to J. H. Potts, G. W. Ashton, & George W. Parker, Lyons, Iowa, Greeting:

Know ye that because by a special order of said court in the above-entitled case you have been assigned to appoint a guardian for the defendant, Carrie Stickney, alleged to be under the age of twenty-one years, and by said guardian to take the answer of said infant defendant, these, therefore, are to empower you or any two of you to go to said defendant, if she cannot conveniently come to you, and appoint a guardian for said infant and take the answer of said infant by such guardian upon his oath or affirmation to be administered by you or any two of you, and having so done you are to send the same closed up under your seals, together with your certificate of your having appointed such guardian as aforesaid, to
52 the said court without delay.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY,
Ass't Clerk.

We, whose names are hereunto subscribed, in pursuance of the foregoing commission to us directed, did, on the 15th day of May, 1882, cause Carrie Stickney, the infant in the said commission named, to come before us at Lyons, in the county of Clinton, in the State of Iowa, and we then and there assigned Robert T. T. Spence to be her guardian to answer and defend this suit on her behalf; and the answer of the said Carrie Stickney, the said infant, was taken, and the said Robert T. T. Spence as guardian was duly sworn to the truth

thereof at the time and place aforesaid and by virtue of the said commission.

Before us—

J. H. POTTS,
G. W. ASHTON,
GEO. W. PARKER,
Commissioners.

The answer of Carrie Stickney, now living at Lyons, county of Clinton, State of Iowa, defendant, to the bill of complaint of Jeannie K. Stickney, filed against her and others in the supreme court of the District of Columbia, No. 8087, equity.

53 The said defendant says that she is an infant, under the age of twenty-one years, and that she claims such interest in the premises as she may be entitled to, and submits her said interests to the protection of this honorable court and prays to be hence dismissed with reasonable costs.

ROBERT T. T. SPENCE, *Guardian.*

Subscribed and sworn to before us the 15th day of May, 1882.

J. H. POTTS,
G. W. ASHTON,
GEO. W. PARKER,
Commissioners.

Commission & Answer by Guardian of Geo. Stickney. Filed May 19, 1882.

In the Supreme Court of the District of Columbia, the 24 Day of April, 1882. In Equity.

JEANNIE K. STICKNEY
v.
EDWARD M. STICKNEY *et al.* } No. 8087, Docket 22.

The President of the United States to Ephraim H. Denison, German D. D. Wright, and James M. Jeffery, of Chicago, Illinois:

Know ye that because by a special order of said court in the above-entitled case you have been assigned to appoint a guardian for the defendant, George Stickney, alleged to be under the age of twenty-one years, and by said guardian to take the answer of said infant defendant, these, therefore, are to empower you or any two of you to go to said defendant, if he cannot conveniently
54 come to you, and appoint a guardian for said infant and take the answer of said infant by such guardian upon his oath or affirmation to be administered by you or any two of you, and having so done you are to send the same closed up under your seal, together with your certificate of your having appointed such guardian as aforesaid, to the said court without delay.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*
By M. A. CLANCY,
Ass't Clerk.

We, whose names are hereunto subscribed, in pursuance of the foregoing commission to us directed, did, on the fifteenth day of May, 1882, cause George Stickney, the infant in the said commission named, to come before us at Chicago, in the county of Cook, in the State of Illinois, and we then and there assigned Olney G. Gibbs to be his guardian to answer and defend this suit on his behalf, and the answer of the said George Stickney, the said infant, was taken, and the said Olney G. Gibbs, as guardian, was duly sworn to the truth thereof at the time and place aforesaid and by virtue of the said commission.

E. H. DENISON,
GERMAN D. D. WYATT,
JAMES W. JEFFERY,
Commissioners.

55 The answer of George Stickney, now of Chicago, in the county of Cook, State of Ill., defendant, to the bill of complainant of Jeannie K. Stickney, filed against him and others in the supreme court of the District of Columbia, No. 8087, equity.

The said defendant says that he is an infant, under the age of twenty-one years, and that he claims such interest in the premises as he may be entitled to and submits his said interests to the protection of this honorable court, and pray to be hence dismissed with reasonable costs.

OLNEY G. GIBBS, *Guardian.*

Subscribed & sworn before *me* this [illegible]th day of May, 1882.
E. H. DENISON,
GERMAN D. D. WYATT,
JAMES W. JEFFERY,
Commissioners.

Replication to Infant's Answer. Filed May 25, 1882.

In the Supreme Court of the District of Columbia, the 25th Day of May, 1882. In Equity.

STICKNEY *vs.* STICKNEY *et al.* } No. 8087.

The complainant joins issue upon the answer of the guardian *ad litem* of the infant defendants.

JOHN SELDEN,
Sol. for Complainant.

56 *Answer of Def'ts. Filed June* 3, 1882.

In the Supreme Court of the District of Columbia. In Equity.

JEANNIE K. STICKNEY
vs.
EDWARD M. STICKNEY, WILLIAM H. STICKNEY, GEORGE STICKNEY, CARRIE STICKNEY. } No. 8087.

The joint answer of the defendants, Edward M. Stickney and William H. Stickney, to the bill of complaint.

1st. We believe the first paragraph to be true.

2nd. The second paragraph is true.

3rd. We believe the third paragraph to be true.

4th. We have no definite information as to the amount or value of the personal estate of the late William Stickney at the time of his death, but we are advised that he left a large personalty, consisting of furniture, stocks, bonds, notes, and other securities and money.

57 We had supposed that said personalty was of much more than $50,000 in value, and we do not admit that its aggregate value was only $50,000, but demand strict proof as to all the personalty left by the said William Stickney of every nature and kind whatsoever.

We have no knowledge as to the amount of his indebtedness at the time of his decease, but we know that he was possessed of ample ready means and had not supposed that he was indebted to any large amount, if at all, and we neither admit nor deny the statement that he was indebted to the amount of $23,000, but demand strict proof of all debts against his estate; neither do we admit or deny any indebtedness to the plaintiff, but demand strict proof of it if any is claimed.

5th. Upon information and belief, we deny that "nearly the whole of the personal property standing or held in the name of 'the said William Stickney' at the time of his death was by him in his lifetime got and obtained subsequently to the year 1870 with money which was part of the sole and separate estate of the plaintiff, which

58 she had acquired as such from her distributive share in the estate left by her father, and which came into the hands of 'the said William Stickney' as trustee or agent 'of the plaintiff' and not otherwise." On the contrary, we are informed and believe, and so believing charge, that the said William Stickney was, prior to the death of the father of the plaintiff, possessed in his own name and right of a large amount of personal property, consisting of money, bonds, stocks, notes, and securities, which he had himself earned and acquired in business.

6th. We do not know what part of the assets belonging to the estate of the said William Stickney the plaintiff has collected nor what payments she has made to creditors, nor do we know what assertion of the title to the personal estate of the said decendent she has made to this court sitting in probate jurisdiction, but we deny that she is

in law or equity entitled to the whole of the personalty of the said decendant after the payment of his debts, or that she is entitled to any other or further interest or right therein than the law of the District of Columbia gives her as the widow of the deceased.

59 7th. We are informed that the real estate in the city of Washington of which the said William Stickney died seized is correctly set out in the seventh paragraph of the bill, and we admit the statement with reference thereto; as to the other statements in said paragraph we are not informed, and neither admit nor deny but demand proof.

8th. We deny that the aggregate value of the real estate of which the said William Stickney died seized is about the sum of $50,000, but we are informed and believe and so charge that said real estate is of the value of $100,000 at least. Upon information and belief, we deny that the whole of the real estate of which the said William Stickney died seized, except the parcels referred to in paragraph eight of the bill, was purchased with money which was part of the sole and separate estate which the plaintiff had acquired from her distributive share of her father's estate, and which came into the hands of *his* husband as her trustee or agent, and upon the same information and belief they charge that prior to and at the time of the death of the father of the plaintiff the said William Stick-

60 ney was seized in his own right of the following pieces or parcels of real estate situate in the city of Washington, to wit: Sublots 1, 69, 70, 71, 72, & 73, in square 448, assessed for taxation in 1869 at about $30,000; sublots 41 and 45, in square No. 624, assessed at $5,396. He also owned sublot 13, in square No. 514, which he sold Feb'y 27th, 1869, to H. C. Spencer for the sum of $7,000, making an aggregate value of $42,396 in real estate, which the said Stickney had in his own right before the death of the father of the plaintiff; and we are informed and believe and so charge that he was at the same time possessed of a considerable estate in money, bonds, stocks, notes, and securities. It is very certain that much the larger part of the real estate in value of which the said Stickney died seized he owned in his own name and right before the death of the father of the plaintiff.

9th. We believe the statement in paragraph nine of the bill that part of lot No. 1, in square 373, was inherited by the said William Stickney from his deceased son to be true, and therefore admit the same. As to all the other statements in said paragraph we

61 *we* have no definite knowledge, but upon information deny the same and demand strict proof.

10th. We do not know whether the statement in paragraph ten of the bill, that at the time of the marriage of the said William Stickney with the plaintiff he was dependant upon a $1,200 salary for his support, is true or not, and therefore neither admit nor deny the same, but demand strict proof; but on information and belief we deny that he continued without any other revenue, income, or source of profit save and except from the like salary until the death of the father of the plaintiff. On the contrary, the deed records of the District of Columbia show that the said William Stickney, prior to the

death of the father of the plaintiff was, possessed in his own right of real estate in the city of Washington assessed for taxation at more than forty-one thousand dollars, and we are informed that he was also possessed of a large personal estate which he had acquired by his own skill, enterprise, and industry.

11th. The statement in paragraph 11 of the bill, that since
62 the death of the plaintiff's father the said William Stickney had at no time an annual income exceeding $4,500 or $5,000, except as derived from the sole and separate estate of the plaintiff, upon information and belief we deny. We are informed and believe and so charge that for many years before the death of the said Stickney he had been connected officially with banks and other financial companies, receiving large salaries therefrom. He was also one of the executors of the estate of the father of the plaintiff. His large real estate was all or nearly all improved and he was in receipt of a large annual rental from this, and he had stocks, bonds, money, and securities to a large amount, which he had not derived from the plaintiff or from her means, all of which must have yielded him a large annual income independently of the money of the plaintiff.

12th. We do not know whether the statements of the 12th paragraph of the bill are true or not, but have no reason to disbelieve the same, and therefore admit them to be true.

63 13th. We believe it is true, as stated in paragraph No. 13 of the bill, that the said Stickney and Robert C. Fox were the executors of the last will of the father of the plaintiff, but we do not know that the distributive share of the plaintiff in her father's estate amounted to $80,343.24, or that she receipted to the executors therefor, and neither admit nor deny the same, but demand strict proof.

14th. We have no knowledge as to whether the statements of the 14th paragraph of the bill are true or not, and therefore neither admit nor deny the same, but demand strict proof. We, however, in *the* case it shall be found that the statements of this paragraph are true, insist that the plaintiff, by voluntarily permitting her husband to use and invest her money as his own and making no claim thereto until after his death, must be treated as having abandoned all separate claim thereto, and that the same has merged in the estate of her husband, and these respondents claim the benefit of the statute of limitation the same as though specially pleaded thereto.

64 15th. We do not know whether the statements of the 15th paragraph of the bill are true or not, and therefore neither admit nor deny the same, but demand strict and legal proof.

16th. We have no knowledge as to whether the statements of paragraph No. 16*th* of the bill are true or not, and neither admit nor deny the same, but demand strict proof.

17th. We have no positive knowledge as to whether the statements of the 17th paragraph of the bill are true or not, and neither admit nor deny the same, but demand strict proof.

18th. As to the statements of the 18th paragraph of the bill we are satisfied that if the said Stickney had desired to leave a last will

or make any other formal expression as to the disposition of his property or recognition of the rights of the plaintiff he had ample time and opportunity before he died to have done so, and we are therefore constrained to deny the same.

19th. We are informed that on the day after the funeral of the said decendent the plaintiff made an appeal to the three surviving brothers of her husband, who were at the house of the de-
65 ceased, to release to her their interest as heirs-at-law and distributees of their brother's estate, she informing them that her husband died intestate, and that, being so pressed at this most unseemly time, they, or at least two of them, yielded a most reluctant consent to the demand of the widow of their dead brother, and that they now express their regret at having done so, and if it had not been done would not do it, believing it to have been the desire and purpose of their deceased brother that the law should distribute his estate; but, whether willing or unwilling, these three brothers did release to the plaintiff their several interests in the said estate, and she is now the owner of three-fourths of all the real estate of the said intestate in fee and of a dower interest in the remaining one-fo-rth, and is by law entitled to the one-half of all the personalty. Her unquestioned interest in said estate must be considerably more that $100,000, and with this amount she can scarcely be said to be "utterly pennyless." Now, if the defendants in this case should establisl their right to the small fragment of this large estate
66 which the law gives them and which their deceesed uncle intended them to have, the value of the interest of the plaintiff in her husband's estate, which she holds without dispute, amounts in value to more than the whole of her $80,000, which she claims to have received from her father's estate, with the interest thereon.

20th. It is true that the plaintiff did make us an offer of a very trifling sum if we would relinquish our rights in the estate of the interest, which we declined to take, believing that we have a right in law and equity to our full share, as heirs and distributees, in the estate of our deceased uncle.

21st. We deny the statements and legal conclusions of paragraph 21st of the bill.

22nd. We deny the legal propositions contained in paragraph No. 22 of the bill.

23rd. We are gratified to learn, from the 23rd paragraph of the bill, that the plaintiff will cheerfully recognize our rights as heirs and distributees in case she is compelled to, and we assure
67 the plaintiff that when she gets ready to recognize our rights we will receive them in the same cheerful mood.

24th. In case our rights as heirs and distributees shall be established we will assent to a decree to partition the real estate, if capable of division without manifest injury, or to a sale of the said real estate and division of the proceeds, in the proportion of our respective interests, under the order of the court, if this be agreeable to the plaintiff.

And, having fully answered, these defendants pray to be hence dismissed with their costs, unless the case be retained for partition,

in pursuance of the prayer of the bill, in which these defendants join.

EDWARD M. STICKNEY.
WILLIAM H. STICKNEY.

E. C. WEAVER,
S. S. HENKLES,
Sol's for Def'ts.

68 *Appearance of S. S. Henkle for Def'ts. Filed Oct.* 4, 1882.

In the Supreme Court of the District of Columbia.

STICKNEY *vs.* STICKNEY *et al.* } 8087, Equity Dock. 22.

The clerk will please enter my appearance for the defendants in this case.

S. S. HENKLE.

Appearance, as ordered, entered by the clerk June 3, 1882.

Replication to Answer of Def'ts, Edward M. & Wm. H. Stickney. Filed June 9, 1882.

In the Supreme Court of the Dist. of Columbia, the 8th Day of June, 1882. In Equity.

JEANNIE K. STICKNEY *vs.* EDWARD M. STICKNEY *et al.* } No. 8087.

The complainant joins issue with the defendants, Edward M. Stickney and William H. Stickney.

JOHN SELDEN,
Sol. for Complainant.

69 *Order of Reference to Auditor. Filed Oct.* 6, 1882.

In the Supreme Court of the District of Columbia, the 6th Day of October, 1882. In Equity.

JEANNIE K. STICKNEY, Complainant, *vs.* EDWARD M. STICKNEY, WILLIAM H. STICKNEY, GEORGE STICKNEY, and CARRIE STICKNEY, Defendants. } No. 8087.

On motion of the complainant and with the consent of the solicitors of the defendants, Edward M. Stickney and William H. Stickney, and of the solicitors of the guardian *ad litem* of the defendants, George Stickney and Carrie Stickney, it is, this 6th day of October, 1882, ordered that this cause be, and it is hereby, referred to the

auditor of this court to ascertain and to report to the court, upon and with the evidence to be produced before him by the respective parties—

1st. Whether the complainant be creditor upon or entitled
70 to repayment out of the estate of her deceased husband upon account or by reason of the matters or any of them in her bill of complaint set forth; and, if so—

2d. To what amount the complainant is such creditor or entitled to be so repaid and what is the value of the real estate in the seventh paragraph of her said bill described and the balance or the value of the balance for distribution of the personal estate left by her said husband at the time of his death after payment of his debts; and, if not—

2d. Whether the real estate in the seventh paragraph of the said bill described can be divided between the complainant and the defendants, according to their respective interests therein, without loss or damage to the same, and how, if at all, such division shall be made.

And the auditor shall be at liberty to state any special matter or circumstances.

And the above inquiries are directed without prejudice to any question upon the merits of the case.

A. B. HAGNER,
Asso. Justice.

71 We consent to the above order.

JOHN SELDEN,
Sol. for Complainant.
S. S. HENKLE,
E. C. WEAVER,
Sol's for Edward M. & W. H. Stickney & for the Guardian ad Litem of Def'ts, Geo. & Carrie Stickney.

72 In the Supreme Court of the District of Columbia.

JEANNIE K. STICKNEY
vs.
EDWARD M. STICKNEY *et al.*
} Equity No. 8087.

The clerk will issue a commission to Charles H. Bailey and Moses Giddings, of Bangor, Maine, to take the deposition of Thomas G. Stickney, a witness for defendants, upon interrogatories and cross-interrogatories filed herewith, and a commission to B. H. Bell and Dwight Marcy, of Rockville, Connecticut, to take the deposition of John N. Stickney, a witness for the defendants, upon interrogatories and cross-interrogatories filed herewith.

Dec. 20, 1882.

JAS. G. PAYNE, *Auditor.*

73 In the Supreme Court of the District of Columbia, the 20th Day of December, 1882.

JEANNIE K. STICKNEY
v.
EDWARD M. STICKNEY. } No. 8087, Equity Docket 22.

The President of the United States to Charles A. Bailey & Moses Giddings, Bangor, Me., Greeting:

Know you that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with power and authority, to examine Thomas G. Stickney as a witness for the defendants in the above-entitled cause upon the interrogatories and cross-interrogatories annexed to this commission, and therefore you are hereby commanded, at a certain day and place or certain days and places to be appointed by you, to cause said witness to come before you, and then and there examine him on oath or affirmation upon the said interrogatories and reduce his testimony into writing, to be signed by said witness, and, having so done, annex the same to this writ, closed up under your seal, and make return thereof into said court with all convenient speed.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Cl'k.*

74 *Interrogatories to be Propounded to Thomas G. Stickney by the Commissioners on Behalf of the Defendants.*

1. What is your name in full, your age, place of residence, and business?

2. What relation were you, if any, to the late William Stickney, dec'd, of Washington city, D. C.?

3. Please state what you know of your brother William's property up to and at the time of his marriage, stating the employments of any kind that he had had previous to that time and his means of making money or acquiring property.

4. Please state fully what you know or learned from conversations with him as to his property or means from the time of his marriage down to the time of his death.

5. State whether or not your brother William visited you in the year 1880 or at any other time, and if on the occasion of such visit you had any conversation with him touching his means or his income; and, if yea, state fully what he said.

75 6. Upon what consideration did you release your interest in your brother William's estate to his widow, Mrs. Stickney, and what moved you to do it?

7. Please state whether you saw your brother at the Astor House, in New York, on the eve of his departure for Europe—his last visit. If yea, who was present, & whether he exhibited to you any bonds or other securities; and, if so, what they were and the amount of them; what he said as to the ownership of them; whether he then

made any disposition of them or any part of them, and, if so, what; what he did with the balance of them; whether you returned them to him or not, and when.

8. Whether or not you built a house for your father; and, if so, what became of the house after your father's death; and, if it was sold, what was done with the proceeds of the sale.

9. If you know anything further in relation to the matters heretofore enquired of and in relation to which you have not been specifically interrogated please state the same.

76 *Cross-Interrogatories to be Propounded to Thomas G. Stickney.*

In the Supreme Court of the District of Columbia, the 16th Day of December, 1882. In Equity.

JEANNIE K. STICKNEY, Complainant,
v.
EDWARD M. STICKNEY *et als.*, Defendants. } No. 8087.

The complainant, objecting to any testimony from the witness, either as to what he "learned from conversations with" his brother, as sought to be shown in interrogatory No. 4, or as to "any conversation with" his brother, as sought to be shown by interrogatory No. 5, or as to what his brother "said," as sought to be shown in interrogatory No. 7, and insisting upon and not waiving any of the said objections, propounds as follows:

First X interrogatory. What was the age of your brother, the late William Stickney, at the time of his marriage?

Second X interrogatory. Had he up to the time of his marriage acquired, to your knowledge, any property or estate by gift, descent, devise, or bequest? If yea, when and from whom, and what were the character and value of the property or estate?

Third X interrogatory. In what year and — what age did your brother leave college, and at what college did he last attend for instruction?

77 Fourth X interrogatory. After completing his education in what business or profession or employment did he first engage, and when and where?

Fifth X interrogatory. How long did he continue in such business, profession, or employment at the place where he first engaged in it?

Sixth X interrogatory. Have you personal knowledge of the income or revenue he derived from such business, profession, or pursuit during the period next above enquired of? If yea, state fully when, how, and under what circumstances you acquired such personal knowledge and what was the amount of such income or revenue.

Seventh X interrogatory. Prior to his marriage in what other business, profession, or employment was he at any time or times engaged, and where and for what period or periods?

Eighth X interrogatory. Have you personal knowledge of the in-

come, emolument, or compensation he derived from any such business, profession, or employment as is last above enquired of? If yea, explain at large when, how, and under what circumstances you acquired such personal knowledge and what was the amount
78 of such income, emolument, or compensation.

Ninth X interrogatory. When did he first come to reside at the city of Washington, in the District of Columbia, and in what business, profession, or employment did he there first engage?

Tenth X interrogatory. Prior to his marriage, was he at any time or times employed at that city in any of the executive departments of the National Government? If yea, at what time or times, in what department, for how long, in what capacity or capacities, and upon what salary or salaries or compensation or compensations?

Eleventh X interrogatory. In what year, or about what year, did he first enter the employ of the late Amos Kendall, and in what capacity and at what salary or upon what terms of compensation?

Twelfth X interrogatory. After entering into the employment of Amos Kendall, how long did your brother continue in that employment, and did he so remain until the death of Mr. Kendall?

Thirteenth X interrogatory. After his marriage, and before taking up his residence on M street, in the said city of Washington,
79 where and with whom did your brother and his wife reside in the District of Columbia? Did they during that period at any time reside with Mr. Kendall? If so, at what period or periods and for what length of time?

Fourteenth X interrogatory. Have you personal knowledge of any property or estate, real or personal, acquired by your brother through his own exertions? If yea, state fully and at large when, how, and under what circumstances you obtained such personal knowledge, and specify the nature and value of all such property or estate, and when and by what particular means it was acquired.

Fifteenth X interrogatory. Mention, as far as your personal knowledge extends, all the business and employments in which your brother was engaged, and all the offices of emolument that were held by him from the time of his marriage to the date of his decease.

Sixteenth X interrogatory. Have you personal knowledge of the income, revenue, or compensation he derived from any such business, employment, or office next above enquired of? If yea,
80 state fully and at large how, under what circumstances, and when you acquired such personal knowledge, and what was the amount of the income, revenue, or compensation he derived, and the source or sources thereof?

Seventeenth X interrogatory. At the time or times you executed any release or releases of your interest in the estate of your brother unto his widow did you believe the recitals contained in such release or releases to be true?

Eighteenth X interrogatory. Have you since obtained any knowledge or information that such recitals are untrue? If yea, state now fully and particularly what knowledge or information you have so obtained and when, from whom, in what manner, and under what circumstances you acquired it.

Nineteenth X interrogatory. After the death of your brother, and before the execution by you to his widow of any release of your interest in his estate, did you propose to her that you should release to her your interest in so much of the estate of your brother as, after payment of debts, would represent $100,000 in value, and to divide the residue of that estate among the heirs-at-law and next of kin of your brother?

81 Twentieth X interrogatory. At the time next above inquired of did you make to the widow of your brother any proposal or suggestion concerning the terms of your release of your interest, in whole or in part, in the estate of your brother? If yea, when and where, what was the proposal or suggestion, and was it communicated verbally or in writing?

Twenty-first X interrogatory. When was the house which was built for your father erected?

Twenty-second X interrogatory. Where was it erected and at what cost, and who advanced the money for erecting it?

Twenty-third X interrogatory. Have you personal knowledge of the source or sources from which the money was obtained by the person or persons advancing it? If so, state fully when, how, and under what circumstances you acquired such personal knowledge.

Twenty-fourth X interrogatory. When did your father die, and after the erection of the house in whose name stood the title in his lifetime, and who upon his decease acquired or held such title?

Twenty-fifth X interrogatory. Under what authority, when, by whom, at what price, and upon what terms of payment was the house sold?

Twenty-sixth X interrogatory. Under what authority, to what person, by whom, and when were the proceeds of sale disposed of?

82 STATE OF MAINE, } ss:
Penobscot, }

On this twenty-ninth day of December, 1882, in pursuance of the foregoing commission to us directed, we, Charles A. Bailey and Moses Giddings, having caused Thomas G. Stickney, of Bangor, in said county, to come before us, who, being first duly cautioned and sworn by us to tell the truth, the whole truth, and nothing but the truth to the interrogatories hereto annexed propounded to him, made answer as follows, to wit:

Ans. to int. 1st. My name is Thomas Gage Stickney; I am sixty-two years old; my residence is Bangor, Maine; I am a coal-dealer.

Ans. to int. 2d. I am a brother to William Stickney, late of Washington, D. C., deceased.

Ans. to int. 3d. Up to the time of his marriage I do not think he was in possession of any amount of property. He was a lawyer by profession and practised law a short time previous to his marriage. His only means of making money was in pursuit of his profession.

Ans. to int. 4th. Soon after his marriage he was employed by Morse & Kendall as their attorney to protect their rights in their telegraph interests throughout the country, and he visited nearly every State in this business. He received liberal pay from them for

these services. He also acted as private secretary for Mr.
83 Kendall. He was also engaged in the general practice of law to a limited extent. He was administrator of an estate in Washington amounting to some $300,000 or $400,000 and had the care of said estate for several years. During the rebellion he bought and sold gold to quite an amount, his profits from this source amounting at least to ten thousand dollars. He received from Mr. Kendall in telegraph stock at par value some ten thousand dollars. Whether it was a gift or in part payment for services I cannot say. His New Orleans telegraph stock, he told me, more than trebled in dividends per annum previous to the rebellion. He was one of the two executors of Mr. Kendall's estate. He was interested in the Potomac Steamboat Company. He was one of the original founders of the Washington Savings Bank; also of the Washington Trust Company, I think it was called, and was president of both these latter organizations at the time of his death. He was president of the upper house of the territorial government of the District of Columbia two terms and received a salary—how much I do not know. He was a member of the Indian commission from the time of its organization, I think, and the last few years of his life was secretary of this commission, receiving $3,000 and expenses salary per annum until near the close of his life, when the salary was cut down to $2,500. He was secretary of the Deaf and Dumb Asylum up to the time of his death, and for the
84 last few years received a salary of $500 per annum. He received a salary of $1,200 per annum as president of the Washington Savings Bank. His salary as president of the Trust Company was $500 per annum. For a number of years he was treasurer of Columbia College & up to the time of his death, at a salary of $1,800 per annum, I think. He regarded his interest in the real estate held by the trust company as very valuable. How much I do not know, but my impressions are it was over twenty thousand dollars, or would be in a short time. No dividends had been declared by said company, but had been appropriated to the payment of the property. He owned his house and lot at Kendall Green at the organization of the Deaf and Dumb Asylum, and sold it to said asylum.

Ans. to int. 5th. He has visited us once a year for many years, excepting when abroad, and has always been free to speak of his business matters. The last time he visited us was either in August or September previous to his death. At the time of his visit we were on one occasion alone in my back office, and my brother spoke freely and frankly in regard to his business matters. During our conversation he minuted on paper the various amounts he received from salaries and other sources, as mentioned in my last answer. He told me also that he owned several houses in Washington, and put down the various amounts he received from them
85 for rents. The only definite amount I can recall now was from a house on Mt. Vernon avenue, I think, which was $1,000. I am not positive, but think he mentioned four or five other houses besides, but do not remember the amounts received.

He also said he had quite a large amount of money loaned, and mentioned especially two amounts of ten thousand dollars each, on which he was receiving very handsome interest. He also mentioned one share in the New York Journal of Commerce which he owned, valued at ($10,000) ten thousand dollars; also a brick house that he had given his son William, which had come back by his son's death.

Ans. to int. 6th. The consideration was nominal ($1). I gave the matter very little thought at the time, never expecting to receive anything from any of my relatives' estates. I am free to confess that I was hasty in my act of releasing my interest in the property. I was moved by importunity and the desire to keep up the kindly relations existing between the families.

Ans. to int. 7th. At the time he sailed for Europe, in 1864 or 1865, he placed in my hands a package containing from $70,000 to $73,000 in stocks, bonds, and notes, in the Astor House, New York, in the presence of my father, my brothers, John and Moody, which he said was his property, and requested me to take with me to Bangor, Maine, and deposit in my brother's bank or some safe place and keep until his
86 return from Europe. I think it was on the next day, while we brothers were sitting together in a private parlor in the Astor House, that brother William inquired of us brothers whether father would like a new house. One of us replied we thought he would, and suggested that we ask him. He was in the room at the time and we called him up to us and one said to him, Would you like a new house, father? William said, If you would I will build one for you. Father replied he would. After some little conversation William requested me to give him the package he had previously given to me, and, breaking the seal, he took therefrom a five-thousand-dollar five-twenty U. S. bond and handing it to me says, Take this bond, build father a nice house, and whatever more is needed I will pay. The balance of this package I brought to Bangor and retained until his return from Europe, when I returned the same to him.

Ans. to int. 8th. With the money furnished by William, as stated in my last answer, we built a house for father. After his decease my brother Moody & myself sold the house for $4,750 and returned the money to brother William.

Ans. to int. 9th. I have always understood from my brother that it was arranged by Mr. Kendall, who accompanied my brother William in the European tour before alluded to, that the whole
87 expense of that tour was to come out of Mr. Kendall's estate after his death. I think of nothing more that I wish to add.

Answers to Cross-Interrogatories.

Ans. to cross-int. 1st. About twenty-four or twenty-five.

Ans. to cross-int. 2d. I do not know from actual knowledge whether he had acquired any property or not up to the time of his marriage.

Ans. to cross-int. 3d. I think he was about twenty years old when he left college. The first three years of his college course was taken at Waterville College, in Waterville, Maine; the last year at Columbia College, in Washington, D. C., from which he graduated.

Ans. to cross-int. 4th. He studied law after his graduation in Washington, D. C., I think. During the time he was studying law he spent a year or two South, teaching, afterward finishing his course of law at Washington and entering there upon his profession, I think. Upon reflection, however, I think he may have entered upon the practice of law in New York. .

Ans. to cross-int. 5th. I do not remember.

Ans. to cross-int. 6th. I do not know the amount of property he acquired in his practice there, but do know that he was able in a short time to pay the expenses of his college course, amounting to $1,000, which father, two uncles, & his brothers had advanced for him.

88 Ans. to cross-int. 7th. No other business.

Ans. to cross-int. 8th. I have not.

Ans. to cross-int. 9th. I now recall the fact that he had a clerkship in Washington after his graduation for a limited time. This was before he commenced practising law. I think he went from New York, where he commenced practice, to St. Louis, but soon after returned to Washington, where he entered into the engagement with Morse and Kendall before stated, and has ever since resided at Washington.

(On hearing this answer read to me, as also that to Int. 4th, I think I would put St. Louis before New York.)

Ans. to cross-int. 10th. He was employed as clerk in one of the departments. I do not remember how long nor what his compensation —.

Ans. to cross-int. 11th. Soon after his marriage, as secretary; don't know the exact year; don't know what his compensation —.

Ans. to cross-int. 12th. Don't know how long he continued as secretary, but have reason to believe that he assisted Mr. Kendall in his business matters up to the time of Kendall's death.

Ans. to cross-int. 13th. He and his wife boarded a few years in the family of Mr. Kendall, at Kendall Green. He then built him a house very near Kendall Green and occupied it until he sold it to the Deaf and Dumb Asylum. I think after that he returned to Mr. Kendall's family and boarded there until he built his house on M & Sixth streets.

89 Ans. to cross-int. 14th. I have personal knowledge derived from conversations with my brother, both to the amount of his property and the manner of its acquisition. As to its nature and value and how acquired I have already given what information I have in answers to direct interrogatories 4, 5, & 7, to which I refer.

Ans. to cross-int. 15th. I have already given all the information I have relating to these matters in my answers to direct interrogatories 4, 5, & 7, and refer to them.

Ans. to cross-int. 16th. I have already given all the information I have in the direct interrogatories last alluded to.

Ans. to cross-int. 17th. The first paper was signed by me at Washington the day after my brother's funeral under great pressure and excitement, and I hardly considered what I signed. A second paper was subsequently sent to Bangor for myself and wife to sign, she not having signed the former. This contained statements which I regarded as utterly untrue, and I returned it with my objections. The next document sent for myself and wife to sign was less objectionable, but still not entirely in accordance with facts, but was signed by us.

Ans. to cross-int. 18th. I have none.

Ans. to cross-int. 19th. I did.

Ans. to cross-int. 20th. At the time the first paper was presented for our signatures, the day after the funeral, we brothers proposed that we receive our equitable proportion of the estate over and above $100,000 after paying the debts, to which proposition my brother's widow agreed, but while a messenger went after a suitable
90 person to draw up the necessary documents she withdrew her assent. Her assent was verbal, as also was the proposition.

Ans. to cross-int. 21st. Within twelve months after my brother sailed for Europe.

Ans. to cross-int. 22d. It was erected on a lot adjoining my brother Moody's, in Bangor; cost about $6,700. Money was advanced by William.

Ans. to cross-int. 23d. I have never had any doubt that the money was acquired by him in his business, but have no personal knowledge of that fact.

Ans. to cross-int. 24th. Nov. 22, 1869. Brother William held the title.

Ans. to cross-int. 25th. By direction of William; soon after father's death; cash, $4,750.

Ans. to cross-int. 26th. By authority of William my brother Moody & myself sold the property to E. H. Tibbetts; proceeds were immediately forwarded to William.

THOMAS GAGE STICKNEY.

91 STATE OF MAINE, *Penobscot*, } ss:

In accordance with the foregoing commission, and in pursuance of the authority by which we are thereby invested, we caused the deponent, Thomas G. Stickney, therein named to appear before us on the 29th day of December, A. D. 1882, at which time, having first administered to him an oath to tell the truth, the whole truth, and nothing but the truth to the interrogatories hereto annexed propounded to him, we thereupon proceeded to examine him upon the said interrogatories and to reduce his answers thereto to writing, which having done we caused him to subscribe the same, which answers so subscribed we have annexed to the commission and inter-

rogatories aforesaid, and herewith return the same, as therein commanded.

Witness our hands & seals, at Bangor, in the county aforesaid, this 29th day of December, A. D. 1882.

CHARLES A. BAILEY. [SEAL.]
MOSES GIDDINGS. [SEAL.]

Commissioners' fees, $20.00.

92 In the Supreme Court of the District of Columbia, the 20 Day of December, 1882.

JEANNIE K. STICKNEY
vs.
EDWARD M. STICKNEY. } No. —, Equity Docket —.

The President of the United States to B. H. Bell and Dwight Marcy, Rockville, Conn., Greeting:

Know you that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with power and authority, to examine John H. Stickney as a witness for the defendants in the above-entitled cause upon the interrogatories and cross-interrogatories annexed to this commission, and therefore you are hereby commanded, at a certain day and place or certain days and places to be appointed by you, to cause said witness to come before you and then and there examine him on oath or affirmation upon the said interrogatories, and reduce his testimony into writing, to be signed by said witness, and, having so done, annex the same to this writ, closed up under your seal, and make return thereof into said court with all convenient speed.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

93 *Interrogatories to be Propounded to John H. Stickney on Behalf of the Defendants by Commissioners B. H. Bell and Dwight Marcy, Esq'r's.*

1. What is your name in full, your age, place of residence, and business?

2. What relation were you, if any, to the late William Stickney, dec'd, of Washington city, D. C.?

3. Please state what you know of your brother William's means or property up to and at the time of his marriage, stating the employments of any kind that he had had prior to that time and his means of making money and acquiring property.

4. Please state fully what you know or learned from conversations with him as to his property or means from the time of his marriage down to his death.

5. Upon what consideration did you release your interest in your brother William's estate to his widow, Mrs. Stickney, and what moved you to do it?

94 *Cross-Interrogatories to be Propounded to John H. Stickney.*

In the Supreme Court of the District of Columbia, the 16th Day of December, 1882. In Equity.

JEANNIE K. STICKNEY, Complainant,
vs.
EDWARD M. STICKNEY *et als.*, Defendants. } No. 8087.

The complainant, objecting to any testimony from the witness as to what he may have learned from conversations with his brother, as in the 4th interrogatory sought to be elicited, and without waiving such her objection, propounds as follows:

First X interrogatory. What was the age of your brother, the late William Stickney, at the time of his marriage?

Second X interrogatory. Had he up to the time of his marriage acquired, to your knowledge, any property or estate by gift, descent, devise, or bequest? If yea, when and from whom, and what was the character and what the value of the property or estate?

Third X interrogatory. In what year and at what age did your said brother leave college, and what college was the last he attended for instruction?

Fourth X interrogatory. In what business, profession, or pursuit did your said brother first engage after leaving college or completing his education, and when and where?

95 Fifth X interrogatory. How long did your said brother continue in such business, profession, or pursuit at the place he first engaged in it?

Sixth X interrogatory. Have you personal knowledge of the income or revenue he derived from such business, profession, or pursuit during the period inquired of in the next preceding X interrogatory? If yea, state fully how you acquired such personal knowledge, and what was the amount of such income or revenue.

Seventh X interrogatory. Prior to his marriage in what other business, profession, or employment was he at any time or times engaged, and where and for what period or periods?

Eighth X interrogatory. Have you personal knowledge of the income, emolument, or compensation he derived from any such business, profession, or employment as is inquired of in the next preceding X interrogatory? If yea, explain fully how you acquired such personal knowledge, and what was the amount of such income, emolument, or compensation.

Ninth X interrogatory. When did he first come to reside at the city of Washington, in the District of Columbia, and in what business, profession, or employment did he there first engage?

Tenth X interrogatory. Prior to his marriage was he employed at that city in any of the executive departments of the National Government? If yea, in what department or departments, for how long, in what capacity or capacities, and upon what salary or salaries or rate or rates of compensation?

Eleventh X interrogatory. In what year or about what year did he first enter the employ of the late Amos Kendall, and in what capacity and upon what salary or terms of compensation?

96 Twelfth X interrogatory. After entering into the employment of Amos Kendall how long did your brother continue in that employment, and did he so continue until the death of Mr. Kendall?

Thirteenth X interrogatory. After his marriage and before taking up his residence on M street, in the said city of Washington, where and with whom did your brother and his wife reside in the District of Columbia? Did they during that period at any time reside with Mr. Kendall; if so, for what length of time?

Fourteenth X interrogatory. Have you personal knowledge of any property or estate, real or personal, acquired by your brother through his own exertions? If so, state fully how, when, and under what circumstances you acquired such knowledge, and specify the nature and value of all such property or estate and when and by what means it was obtained.

Fifteenth X interrogatory. Mention all the business and employments in which your brother was engaged and all the offices of emolument held by him, as far as your personal knowledge extends, from the time of his marriage down to the date of his decease.

Sixteenth X interrogatory. Have you personal knowledge of the income, revenue, or compensation he derived from any such business, employment, or office? If yea, state now, fully and at large, how, under what circumstances, and when you acquired such personal knowledge, and what was the amount of the income, revenue, or compensation he derived and the sources or source thereof.

Seventeenth X interrogatory. At the time or times you executed any release or releases of your interest in the estate of your brother did you believe the recitals contained in such release or releases to be true?

97 Eighteenth X interrogatory. Have you since obtained any knowledge or information that such recitals are untrue? If yea, state now, fully and particularly, what knowledge or information you have so obtained, and when, from whom, in what manner, and under what circumstances you acquired it.

Nineteenth X interrogatory. After the death of your brother and before you executed to his widow any such release or releases did you propose to her that you should release to her your interest in so much of the estate of your brother as, after the payment of debts, would represent $100,000 in value, and to divide the residue of that estate amongst the heirs-at-law or next of kin?

Twentieth X interrogatory. At the time next above inquired of did you make to the said widow any proposal or suggestion concerning the terms of your release of your interest, in whole or in part, in the estate of your brother? If yea, when and where, what was the proposal or suggestion, and was it communicated verbally or in writing.

98 Supreme Court of the Dist. of Columbia.

JEANNIE K. STICKNEY *vs.* EDW'D M. STICKNEY.

I, John N. Stickney, of Vernon, in Tolland Co. & State of Connecticut, on oath and in answer to the interrogatories and cross-interrogatories hereto attached, depose and say as follows, viz:

Ans. to int. 1st. My name is John N. Stickney; age, between 64 & 65 y'rs; residence, Rockville, Conn.; business, insurance ag't & treasurer of "The Rockville Gas-Light Co."

Ans. to int. 2d. I was brother of the late Wm. Stickney, of Washington, D. C.

Ans. to int. 3d. My knowledge in regard to my brother William's property up to and at the time of his marriage is imperfect. I don't think he had much property at that time. He was employed in Virginia as a private tutor after he graduated from college. He practiced law in St. Louis, and was employed, I think, in one of the departments of the Government at Washington, D. C.

Ans. to int. 4th. From the time of his marriage down to his death I had conversations with him from time to time regarding his property. He built a house at or near Kendall Green, Washington, which, I think, he sold to the Deaf and Dumb College. He built an expensive brick house and stables on M St. between 6th & 7th Sts., in Washington, on land which, I think, he bought of my brother Frank.

On one occasion while visiting my brother William at Wash-
99 ington he took me to see a brick house at the West End or over that way. He used to speak of his small frame houses in Washington & also of one or more small brick houses there. In our occasional rides about the city he pointed out some, if not all, these houses. He owned ten shares of the cap. stock of the Rockville Gas-Light Co., which he sold for $750. He owned one share of the stock of the New York Journal of Commerce, for which he paid $10,500; on this he received large dividends up to the time he gave it to his son Willie. He owned it himself several years. After Willie's decease the share was transferred back to my brother William. In the year 1882 the dividend on each share of the stock was $775. He owned 10 shares of the Rockville National Bank, and sold the stock in 1874. I heard him speak of a valuable interest in the brick block in Washington occupied in part by the Savings Bank & the Deposit Vault Co. I think there were only 3 or 4 owners, of which he was one. He mentioned to me a loan of $10,000, I think, on which he received 10 per ct. interest. He owned in a steamboat Co. He invested in a brick-making machine; also in a machine for dessic-ating eggs. He furnished capital for Adams & Stickney to engage in the manufacture of gas governors at Baltimore, subsequently selling out his interest to Adams. Near the time of his sailing for Liverpool he took from a package of bonds which he had put up for the purpose of sending to my brother Moody for safe
100 keeping while he was absent five thousand dollars in bonds and handed them to my brother Thomas, requesting him to use the proceeds for building a house for our father, Amos Stickney,

of Bangor, Me. After my father's decease the house was sold and the proceeds returned to my brother William. He, during the late war, purchased, I think, $10,000 in gold, which I thereafter heard him speak of as a "fortunate hit." I think he owned telegraph stock. My brother William got me to insure some of his property. On my books I find the following entries, made at the times of the several dates: Feb., 1876, 3 small houses, insured for $1,000 each; total, $3,000; on 2 other houses, $2,000; on brick houses, $2,000; on household furniture, $400; on library, $700. Jan. 20, 1868, I wrote a policy for $3,200 in the Putnam Fire Ins. Co. for him, to wit, on his painting "Adoration," $150; on his painting "Porsilippo," $250; on his painting "Sunset Near Munich," $600; on his painting "Aurora," $150; on his painting "Swiss Glacier," $200; on his painting "Magdalene," $50; on his marble statue of "Washington," $600; on his bust "Affliction," $200; on his ebony and ivory cabinet, $150; on his large antique cabinet, $350; on the contents of the large antique cabinet, $100; on his "Mosaic Florentine table," $250; on his green marble vase, $150—all in the dwelling-house occupied by the insured and by the Hon. Amos Kendall, situated in Washington, D. C.; other insurance permitted. All these insurances were made in my brother Wil-
101 liam's own name and as his property, and I have no idea that they were insured for their full value.

Ans. to interrog. 5th. The moving consideration of the release of my interest in my brother William's estate to his widow was friendship. It was done in the following circumstances: My sister Jeannie claimed, the day after brother William's funeral, that his whole estate would not inventory more than $75,000. My proposal, at first, was to join my bro's, Thomas and Frank, in relinquishing all up to $75,000, and, subsequenty, all up to $100,000. We were told in emphatic language by my sister Jeannie that she believed that the property would not exceed $75,000; certainly, not more than $100,000, and she claimed the right to have that amount set to her as the portion of her father's estate given to her. My two brothers finally consented to sign the release, and, not wishing to stand out, I "followed suit."

Ans. to interrog. 6th. I don't think I can add anything to what I have heretofore stated.

Ans. to X interrog. 1st. In my mother's Bible, given to me, it is recorded that brother William was born April 11, 1827, and was married June 15, 1852.

Ans. to X interrog. 2d. I have no knowledge of his having acquired any property as indicated.

Ans. to X interrog. 3d. I don't know at what age he left college. I think the last college he attended was Columbia College.

Ans. to X interrog. 4th. I think he was a tutor in a private family in Va., & afterwards set up as an att'y at St. Louis, with a partner.

Ans. to X interrog. 5th. I don't know.

Ans. to X interrog. 6th. I have not such personal knowledge.

102 Ans. to X interrog. 7th. I think he was a clerk in one of

the Departments at Washington. For what period or periods I do not know.

Ans. to X interrog. 8th. I have not.

Ans. to X interrog. 9th. I don't remember.

Ans. to X interrog. 10th. Answered in my reply to 7th cross-interrogatory, and a more definite answer I am unable to give. I am unable to state what his salary was.

Ans. to X interrog. 11th. I do not remember the time he entered the employ of Mr. Kendall. I have heard him speak of his being in the employ of Mr. Kendall, as secretary, on a salary of about $1,500 per year.

Ans. to X interrog. 12th. I don't know whether he received a salary up to the time of Mr. Kendall's death or not, but I think he did. I can't say how long he was in his employ.

Ans. to X interrog. 13th. They lived with Mr. Kendall at Kendall Green. For a while during the war they lived with Mr. Kendall at Trenton, N. J. I can't give the time. He, with his family, accompanied Mr. Kendall abroad, being absent, I think, nearly 2 y'rs.

Ans. to X interrog. 14th. I cannot state how he acquired his property.

Ans. to — interrog. 15th. As nearly as I am able to remember, he held the following offices: Secretary of Mr. Kendall, secretary of the Board of Indian Commissioners, president of the savings bank & of the safety-fund vaults, treasurer of Columbian University, secretary of the Deaf & Dumb College. I think he was one of the executors on the estate of his father-in-law, and was also trustee in another estate in Washington.

103 Ans. to X interrog. 16th. My knowledge of the income from the preceding offices was obtained from my brother himself. We used to talk about these things when we were together. I think his salaries amounted to $6,000 per annum, tho' I cannot state definitely what he rec'd from each.

Ans to X interrog. 17th. I have not a copy of the release I signed before me. I signed it at the time, not because I thought it just and right to give up any legal claim I might have to some portion of my brother's estate, but my friendly feelings were too strong to allow of my standing out. I cannot say that I thought the recitals in the instrument were true, but I tho't I better sign it.

Ans. to X interrog. 18th. Not recollecting what the recitals were, I am unable to answer.

Ans. to X interrog. 19th. Substantially, yes.

Ans. to X interrog. 20th. I made no proposal, as I recollect, or suggestion concerning the terms of release, except as I have before mentioned in this examination; have made no proposal in writing. The conversation hereinbefore alluded to was in the library of my brother's house, at Washington, on the day succeeding his funeral.

(Signed) JOHN N. STICKNEY.

TOLLAND COUNTY, CONN., *ss:*

VERNON, *Jan. 5th, A. D.* 1883.

Then, by virtue of the foregoing commission, we caused John N. Stickney, the said deponent, to appear before us at Rockville, in said town of Vernon, and we then and there examined him on
104 oath upon the interrogatories and cross-interrogatories annexed to our said commissione*d*, and the testimony so given by the deponent is hereinbefore fully set forth in writing, and the same was signed by the deponent in our presence, and is attached to our said commission.

BENEZET H. BILL.
DWIGHT MARCY.

Marcy's fee, $10; B. H. Bill, $12.

105 *Auditor's Report. Filed April* 24, 1883.

In the Supreme Court of the District of Columbia.

JEANNIE K. STICKNEY *vs.* EDWARD M. STICKNEY *et al.* } No. 8087. Equity Docket 22.

Report of auditor.

This cause is referred to the auditor to ascertain and report upon and with the evidence to be produced before him by the respective parties, first, whether the complainant be creditor upon or entitled to repayment out of the estate of her deceased husband upon account of or by reason of the matters or any of them in her bill of complaint set forth; and, if so, second, to what amount the complainant is such creditor or entitled to be so repaid, and what is the value of the real estate in the seventh paragraph of her said bill described, and the balance or the value of the balance, for distribution of the personal estate left by her said husband at the time of his death after payment of his debts; and, if not, second, whether the real estate in the seventh paragraph of the said bill described can be divided between the complainant and the defendants according
106 to their respective interests therein without loss or damage to the same, and how, if at all, such division shall be made.

After due notice I proceeded to execute this order of reference, and return herewith the depositions and exhibits submitted in proof.

The complainant in this cause files her bill against the heirs-at-law of her husband, the late William Stickney, who died in this District intestate on the 13th of October, 1881, claiming to be a creditor of her said husband and seeking payment from his estate.

The history of this matter and of its origin, as established in proof, is substantially as follows:

Amos Kendall died in this District on the 12th of November, 1869, having duly executed a last will and testament whereby he gave and devised the residue of his estate to his daughters in the following terms:

"The residue of my property, real and personal, and all my rights

and claims, legal and equitable, pertaining to property I will and bequeath to my beloved daughters, Mary A. Greene, Jane E. Stickney, Fannie Fox, and Marion Babcock, to be equally divided between them."

107 He also appointed the said William Stickney, husband of the complainant, and Robert C. Fox, husband of another daughter, executors of the said will.

The proceeds of the estate coming into the hands of these executors were from time to time divided, and upon the receipts of the complainant to them her share was currently delivered to her husband, who, as the proof here shows, used or invested the same in his own name without the knowledge of the complainant and in contravention of such express directions as she is shown to have given in the premises.

In Schedule A, I have stated an account of such monies as are shown to have come to the possession of the said William Stickney and not delivered to the complainant.

The proof touching the items enumerated in the first page of this schedule traces the property into the bank deposit account of the said William Stickney, or to his use and appropriation of it subsequently to its receipt from the executors of Kendall.

In the course of this reference the books of account kept by the said executors of Amos Kendall were produced, showing the
108 distribution of the said estate, and the share from time to time belonging to and distributed to the complainant. There were also produced bank-books and check-books of the said William Stickney, showing, in most instances, the specific use made by him of the monies so being the share of the complainant derived from her said father's estate.

By the act of Congress passed on the 10th of April, 1869, and now contained in section 727 of the Revised Statutes relating to the District of Columbia, its is provided that—

"The right of any married woman in this District to any property, personal or real, acquired during marriage in any other way than by gift or conveyance from her husband shall be as absolute as if she were unmarried, and shall not be subject to the disposition of her husband."

This statute was in force at the time of the death of Mr. Kendall and during the period covered by the distribution of his estate. The money, therefore, acquired by the complainant, or to which she became entitled from that estate, was her property as absolutely as if she were unmarried, and was not subject to the disposition of her husband.

It will be seen upon examination of the evidence taken in
109 this reference that there is no warrant for any presumption that the complainant assented to or acquiesced in the use or investment of her property by her husband, or that he undertook to reduce it to his possession and treat it as his own. On the contrary, the proof shows that she intended to retain the apparant as well as the real ownership, the nominal title as well as the equitable right,

and that he considered himself as her trustee and proclaimed himself as such.

The relations between the two were fully up to the standard of marital confidence and trust, and it is manifest that it was never his intention to deprive the complainant of her patrimony. It would seem needless, then, to argue that he could not have so dealt with it to the prejudice of her rights without her consent; but the theory of the answers seems to justify, if not require, the consideration of this point.

The act of Congress above cited protected this property from the disposition of the husband, whatever might have been his right at common law. He must be held to have received it as her agent or trustee and liable to account to her as such. No appropria-
110 tion or investment by him without authority from her would relieve him from such accountability.

A large number of authorities have been cited by the counsel for the complainant to maintain the theory that the relation of debtor and creditor may exist between husband and wife, and that such a relation is established in this cause, and that, being so creditor, she and her claim are to be treated as in the case of any other creditor. All of these authorities and others which have come to my notice in my examination of this question concur in sustaining the proposition that the relation of debtor and creditor may exist between husband and wife, and does exist wherever and whenever the husband, without the wife's consent or acquiescence, uses or appropriates to his own use her money or property. Especially is this the case in those States in which the Legislatures have enacted what is ordinarily known as the "married woman's law."

The case of Bergey's appeal, reported in the 60th Pennsylvania State Reports, page 408, seems to be in point.

Jacob Bergey received money of his wife's, being her patrimony portion. He received the money in her presence and
111 both united in the execution of a receipt for the same. The husband appropriated the money by investment in the purchase of a farm. The supreme court of that State—Thompson, chief justice—held that there was no proof of a gift to the husband and such gift could not be inferred. The case arose after the "married woman's acts" in that State, which declared her property hers for her separate use, and the court says:

"As the law made it hers, it presumes it to have been received for her by her husband," and several cases are cited in the opinion to support this proposition. The court then goes on to say:

"If it was not a gift the husband was a trustee for the wife, and, whether he kept the money in his pocket or invested it, honesty required that he should account to her for it. Courts hold the married woman to clear and specific proof that the property claimed by her is an acquisition independently of her husband, and, that being established, they give her the full benefit of it."

I refer particularly to this case, as the opinion expresses in very concise terms the judgment of the courts of that State, of New

112 York, of Maryland, and others of the principal States in reference to this subject.

An equally strong case will be found in Johnson *v.* Johnson's Administrators, 7th Casey, 450.

Some few cases I have found in Maryland in which the courts have held adversely to a wife's claim, but they are cases in which it clearly appeared that the use and appropriation by the husband was with the consent and acquiescence of the wife. In all the cases reported in that State the courts have held that the relations of debtor and creditor may exist between husband and wife, and that when such relation is established between them her right will be regarded by law with as much favor as those of other creditors.

See Mayfield *v.* Kilgour *et al.*, 31st Maryland, page 240.

The exception to this latter rule is that, when the receipt and appropriation by the husband are with the wife's knowledge and acquiescence, there must be established an express agreement on the part of the husband to repay. In these exceptional cases it may be noted that the interests of creditors were involved. In the present case there are no creditors whose rights are affected, the defendants here standing in the shoes of the husband and possessing no greater rights than he would have.

113 It is further held by the courts that a disclaimer by the husband, after his conversion of the property, will give the money to the wife.

See Gochenauer's Estate, 11th Harris, 460; and Gravill *v.* Moyer, 9th Wright, 530.

The proof in this proceeding shows that the complainant's husband, at the time of renewing investments, spoke of the money as being the property of his wife and not his own.

The method of dealing between the executors of Amos Kendall and the complainant, as before stated, was the delivery of her receipts to them and the delivery by them to her husband of her distributive share, for which the receipts were given. The money so received by the husband was never delivered to the possession of the wife, and while her receipts discharged her husband as the executor of Kendall, he retaining the money, the technical character of his trust only was changed, and he became a trustee for her.

See Rich *v.* Cockell, 9th Vesey, 375.

The complainant had no other trustee but her husband, and it is well settled by numerous cases, as well as by elementary writers, that when the husband retains the possession of the separate property of the wife he holds it in trust for her benefit. Whether

114 such property became mingled with that of the husband cannot affect the trust.

It would be difficult, I think, to find a stronger case in proof to establish the right of the wife as a creditor of the husband than that presented here as to the principal of this her property or money. It is not claimed, as I understand it, that the husband or his estate are accountable for the earnings or income of this money, and it is unnecessary to discuss that point.

The plea of limitations is invoked by the defendants in bar of the complainant's claim.

To this several matters may be effectually replied—first, the complainant's disability by reason of her coverture; second, the character of the indebtedness, having its origin in a relation of trust; and, third, that not until the death of her husband did the complainant discover that her property was not invested or held in her own name.

I have to report, therefore, upon the evidence produced before me, that the complainant is a creditor upon and entitled to repay-
115 ment out of the estate of her deceased husband on account of the matters set forth in her bill of complaint in the sum of the balance stated in Schedule A.

I am further directed to report the value of the real estate described in the bill of complaint and the balance or the value of the balance for distribution of the personal estate left by her said husband at the time of his death after the payment of his debts.

In Schedule B of this report I have stated an account in detail of the several parcels of real estate referred to, with its value as estimated in the proof, together with the balance of the personal estate remaining for distribution after the payment of the debts of the intestate. The latter portion of the account is derived from the account of the complainant as administratrix of the personal estate of her said husband filed and settled in the special term of this court for orphans' court business. Of the balance in hand, amounting to $32,202.08, the said administratrix is directed to retain $11,000 to meet a possible judgment in equity cause No. 5950, which is now pending in the Supreme Court of the United States on appeal from the decree of this court.

April 6th, 1883.

JAS. G. PAYNE, *Auditor.*

Auditor's fee, $——.

116 At the request of the counsel for the complainant I further report the special matter following:

From the evidence adduced before me the application to the balance of the debt due the complainant, as shown in Schedule A, of the entire unexpended personalty (including $11,000 retained), as shown in Schedule B, and of the entire proceeds of any sale, should such be decreed, of the real estate, shown in Schedule B, would, according to the valuations shown in the said schedule, leave no surplus whatever for distribution amongst the defendants as the next of kin and heirs-at-law of William Stickney, deceased.

In this connection I have made and appended hereto Schedule C. This schedule shows a small apparent balance for distribution, but no allowance is made for the costs and expenses of sale, which would more than exhaust this sum.

JAS. G. PAYNE, *Auditor.*

117 SCHEDULE C.

Balance of debt due complainant, as per Schedule A	$78,371 13
Crediting all, if applicable, of personalty, as per Schedule B	32,202 08
Balance	$46,169 05

If the real estate should be sold at prices as per valuation in Schedule B the proceeds of sale, including all allowance for costs, expenses, and commissions, would be applicable as follows:

Proceeds of sale upon estimate of value, as per Schedule B	$53,550 00
Deduct commutation of complainant's dower, one-eighth	6,693 75
	$46,856 25
Leaving applicable to balance of debt above, after exhausting personalty	46,169 00
Balance for distribution	$687 20
Distributable to complainant, as assignee, three-fourths	$515 40
Distributable amongst defendants, one-fourth	171 80

118 It is obvious, however, that in the event of a sale of the real estate the above balance of $687.20 would be much less than the sum required to discharge costs, expenses, and commissions.

JAS. G. PAYNE, *Auditor.*

SCHEDULE A.

Account of the distributive share of Jeannie K. Stickney in the estate of Amos Kendall, deceased, which came into the hands of William Stickney and was held by him.

1870.			
Jan.	—	$26,000 United States four-per-cent. registered bonds, at 1.135	$29,850 50
"		Camden & Amboy Railroad Company bond, par value	1,000 00
"	21.	Cash	251 82
July	18.	From sale of Kendall Green	1,500 00
1872.			
Jan.	23.	Cash	600 00
July	1.	From sale of Kendall Green	17,123 75
"	1.	From sale of lot 14, square 204	1,187 50
Oct.	21.	do. do.	6,036 47
Nov.	2.	Cash	600 00

Dec.	16.	From proceeds of judgment against F. O. J. Smith	1,247 92
1873.			
April	10.	From sale of 14th-street house	4,000 00
119			
May	3.	Cash	100 00
1875.			
Jan.	5.	Cash	160 91
May	21.	Cash	90 39
June	7.	Cash	480 13
Nov.	5.	Cash	117 44
1876.			
April	24.	From interest collected from Smith	110 06
May	12.	do. do. from Chase & Root	180 79
July	1.	From Chicago rents	54 33
Dec.	19.	Cash	193 70
1877.			
Jan.	3.	From Chase & Root notes	3,720 86
Feb.	—.	¼ of $233.33, less commissions	274 65
March	26.	¼ of 532.80, less commissions	
"	30.	¼ of 350.00, less commissions	
July	19.	From Chicago rents	99 18
Oct.	10.	do.	142 32
Dec.	24.	From rents	104 64
1878.			
Jan.	22.	From rents	57 95
Feb.	25.	" "	65 91
May	2.	" "	9 03
June	24.	" "	80 60
120			
Sept.	30.	From rents	58 30
Nov.	14.	" "	60 80
1879.			
Feb.	19.	From estate of Jay Cooke & Co.	79 43
Sept.	24.	From rents	125 79
Dec.	23.	From sale of Chicago property	7,770 89
		Amount carried forward	$77,536 06

SCHEDULE A—(Continued).

		Amount brought forward	$77,536 06
Jan.	16, 1871.	Cash	215 50
Nov.	3, 1873.	"	308 75
Jan.	6, 1874.	Cash	153 82
Feb.	5, 1874.	"	43 82
April	15, 1874.	"	475 00
July	3, 1874.	"	157 40
Nov.	11, 1874.	"	484 41
Oct.	3, 1878.	"	61 75

Dec.	6, 1878.	Cash	58 27
Jan.	11, 1879.	"	57 62
Feb.	7, 1879.	"	62 44
March	8, 1879.	"	63 50
April	10, 1879.	"	65 25
May	9, 1879.	"	43 88
Oct.	6, 1879.	"	63 33
Nov.	7, 1879.	"	63 33
Dec.	8, 1879.	"	57 00

Total debits $79,971 13

121

1877.		Less:		
Jan.	3.	By payment to complainant by checks of William A. Stickney	$600 00	
1879.				
Dec.	23.	By cash to Willie	1,000 00	
				1,600 00

Balance due $78,371 13

JAS. G. PAYNE, *Auditor.*

SCHEDULE B.

Account and value of the real estate described in the seventh paragraph of the complainant's bill and of the value for distribution of the personal estate of William Stickney.

Real estate:

Sublots 37 and 38, in square 182, unimproved	$5,500 00
Sublot 72, in square 242, with improvements	10,000 00
Sublot 136, in square 365, with improvements	3,000 00
Sublot 156, in square 365, with improvements	2,250 00
122 Parts of lots 1, 69, 70, 71, 72, & 73, in square 448, with improvements	19,000 00
Part of lot 1, in square 523, with improvements	4,000 00
Sublot 41, in square 624, with improvements	2,500 00
Sublot 45, in square 624, with improvements	2,800 00
Sublots 21 and 22, in square 892, with improvements	1,800 00
Part of lot 1, in square 373, with improvements	2,700 00
Total	$53,550 00

Personal estate:

Retained to meet possible judgment in cause No. 5950, in equity, now pending in the Supreme Court of the United States	$11,000 00	
Balance for distribution remaining	21,202 08	
Total		$32,202 08

The administratrix has recovered a judgment at law against Edward M. Stickney, the value of which is uncertain.

JAS. G. PAYNE, *Auditor.*

123 WASHINGTON, D. C., *Nov. 8th*, 1882.

I have been engaged in the business of a real estate agent about seven and a half years in this city and am acquainted with the values of real estate throughout the city.

I place the following values upon the property of the late Wm. Stickney:

Lot, part of 1, sqr. 373, with improvements	$3,200 00
Lots, sub 37 & 38, sqr. 182	6,000 00
Lot, " 72, " 242, with improvements	10,000 00
Lots, " 136 & 156, sqr. 365, "	5,250 00
" of 1, 69, 70, 71, 72, 73, sqr. 448, with improvements	19,000 00
Lot, " 1, " 523, "	4,000 00
Lots, sub 41 & 45, " 624, "	5,000 00
" " 21 & 22, " 892, "	1,800 00

Very respectfully, R. O. HOLTZMAN.

Col. J. G. Payne, auditor, &c., Washington, D. C.

WASHINGTON, D. C., *Nov. 4th*, 1882.

Jas. G. Payne, Esq., auditor.

DEAR SIR: In my testimony on Nov. 1, '82, in the Stickney case, before you, I was under a misapprehension as to the location of house on lot 1, square 523, being No. 307 M St. N W.

124 I was under the impression that it was in the Davis row, between 4th & 5th, and made my estimate under the impression. Instead of $5,500 I would thank you to alter the figures to $4,000, which is as much as I think the property would bring.

Very respectfully yours, B. P. SNYDER.

WASHINGTON, D. C., *Nov.* 13, 1882.

Col. Jas. G. Payne, Washington city, D. C.

MY DEAR SIR: In the matter of the valuation of certain real estate assessed in the name of the late Wm. Stickney I will state that since my testimony was given I have inspected houses No-. 1521 & 1536 Columbia street and No. 307 M street N. W. I regard 1521 Columbia St. as worth eighteen hundred dollars cash and *ten* thousand dollars on time; No. 1536 Columbia St. as worth twenty-eight hundred dollars cash and three thousand dollars on time; No. 307 M St. as worth thirty-seven hundred and fifty dollars cash and about four thousand dollars on time. As one of the executors under

125 the will of the late Hon. Amos Kendall I will state that the whole distributive share of Mrs. Jeannie Stickney in her father's estate, shown in the accounts of the executors filed in the orphans' court, was handed to her husband by the executors. I have no knowledge of any money having been paid to Mrs. Stickney direct. In the case of Mrs. Stickney, Mrs. Fox, and Mrs. Cutter

the money or proceeds went through their husbands, and receipts were obtained from their wives and filed accordingly.

Very respectfully yours, ROBERT C. FOX.

STICKNEY *vs.* STICKNEY.

MONDAY, *Oct.* 30, 1882.

Hearing pursuant to notice.

Present: Mr. Selden, for the complainant; Messrs. Henkle & Weaver, for the defendants.

The defendants admit that $120,000 of United States registered bonds belonged to or formed part of the estate of Amos Kendall, deceased, of which bonds Mrs. Stickney, the complainant in this cause, was entitled to $26,300.

The complainant offers in evidence the certificate of the
126 Register of the Treasury of the United States containing a statement of the said U. S. bonds issued to the said Amos Kendall, together with a statement of the bonds registered in the name of the complainant in this cause; which certificate is admitted without objection and marked Complainant's Exhibit No. 1.

The said bonds are calculated at the rate of 113¼.

The complainant produces the book kept by the executors of the will of the said Amos Kendall; also the personal bank books of William Stickney; also his personal check stub books, which are examined by the auditor and counsel and which contain the following entries:

Jan. 21, 1870.—Executors' books, page 33, "surplus, $251.82, belonging to Mrs. Stickney." The personal bank book of William Stickney shows a deposit of the same amount to his credit with Jay Cooke & Co. The check book shows the same under date of Jan. 19th.

——, —. Executors' book, page 24, shows charged to executors 4 Camden & Amboy R. R. bonds, at $1,000 each. Page 33, Mrs. Stickney, the complainant, is charged with one of the said bonds, $1,000.

The bank book and check book of William Stickney, under
127 date of Jan. 15, 1870, show a deposit by him of Camden & Amboy R. R. bonds, coupon, $28.50.

July 13, 1870.—Executors' book, page 40, shows a receipt "from proceeds of sale of Kendall Green, $6,275."

July 18th.—Page 41, the complainant is charged with her share of the said proceeds, being $1,500, and on the same date the bank book and check book of William Stickney show a deposit of the same to his credit.

Jan. 16, 1871.—Executors' book, page 45, the complainant is charged with $215.50.

Jan. 3, 1872.—Executors' book, page 59, the complainant is charged with	$600 00	
On page 57, William Stickney is charged with commissions	56 56	
The bank book and check book show a deposit to the credit of William Stickney of	$656 56	$656 56

July 1, 1872.—Executors' book, page 62, shows the receipt by the executors of the balance of the purchase-money on account of Kendall Green, being $72,100. Page 63 shows the payment to Mrs. Stickney of her share, being $17,123 75
And also shows the commissions of the two executors as being $3,605 (one-half of commissions) 1,802 50
And on the same date the bank book and check book of William Stickney show a deposit to his credit of $18,926 25
128 being the aggregate of Mrs. Stickney's share and Mr. Stickney's commissions.

July 1, 1872.—Executors' book, page 62, shows the sale of lot 14, in square 200, and a receipt of cash payment of $5,000. Page 65, same book, shows the payment to the complainant of one-fourth of the above amount, less commissions, making her share $1,187 50
And the commissions of William Stickney 125 00
The bank book and check book of the said William Stickney show a deposit to his credit of $1,312 50

Oct. 21, 1872.—Executors' book, page 65, shows a payment to the complainant of one-fourth of the deferred payment for the above-named lot, less commissions, making her share $6,036.47. The bank book and check book show a deposit to the credit of the said William Stickney of the same amount.

Nov. 2, 1872.—Executors' book, page 69, shows a payment to the complainant, on account of income, of $600 00
Page 67 shows a payment to William Stickney of commissions 75 84
And the bank book and check book of William Stickney show a deposit to his credit of $675 84

129 Dec. 16, 1872.—Executors' book, page 70, shows the receipt by the executors, on account of judgment against F. O. J. Smith, of $5,254.42.
Page 71 shows the payment to William Stickney of commissions $131 36
And to the complainant her share of the amount of the said judgment, being 1,247 92

The bank book and check book of William Stickney show a deposit to his credit of 1,379 28

May 3, 1873.—Executors' book, page 75, shows a payment to the complainant of $100 00
The bank book and check book of William Stickney show a deposit to his credit, "for account of Kendall Green estate," of 100 00

Feb. 5, 1873.—Executors' book, page 74, shows the sale by the executors of house on 14th St. for $16,000, and on page 75 is shown a payment to the complainant of her share of the same, being $4,000 00

The bank and check books of William Stickney, under date of April 10, 1873, show deposits to his credit of	$2,875 00	
And	447 76	
And on the 3rd of May, 1873, of	500 00	
		3,822 76

Being part of the above $4,000.00.

130 It is admitted that the banking-house of Jay Cooke & Co., with whom the bank account of the said William Stickney had been kept up to the said date, suspended business in September, 1873.

Mrs. JEANNIE STICKNEY sworn:

Examined by Mr. SELDEN:

I am the complainant in this cause and the widow of the late William Stickney. I am also the administratrix of his personal estate, and as such took possession of all his personal effects. After diligent search I am unable to find that he kept any bank book or deposit account after the failure of Jay Cooke & Co., about the 11th of September, 1873, until he commenced such an account and kept such a book with the firm of Riggs & Co., on the 13th of July, 1874. I have no reason to suppose that any such book exists.

(Examination of books resumed.)

The executors' book shows payments to the complainant from the estate of the said Amos Kendall as follows:

January 6, 1874. Page 75		$153 82
November 3, 1873. " 75		308 75
February 5, 1874. Page 77		43 82
131 April 15, 1874. Page 77		475 00
July 3, 1874. " 79		157 40
November 11, 1874. Page 79		484 41
		$1,623 20

Jan. 5, 1875.—Executors' book, page 78, shows the receipt by the executors of $677.50. On page 79, entry under the same date shows the executors' commissions on this collection to have been $33.87, and the share of each of the distributees $160.91.

The check book of William Stickney shows that he checked out to each distributee, excepting the complainant, their said shares. The check to Mrs. Fox included her husband's share of the commissions.

May 21, 1875.—Executors' book, page 80, shows the receipt by the executors of $380.60, one-fourth of which, after deducting commissions, is $90.39. The check book of William Stickney, under the same date, shows a deposit of $100 00

Made up of the above-mentioned share	$90 39	
Commissions	9 51	
And cash	10	

THOMAS R. JONES sworn.

Examined by Mr. SELDEN:

132 I knew the late William Stickney and knew about his business. After the failure of Jay Cooke & Co. he kept no bank account for some months and until he opened an account with Riggs & Co. I was teller in the bank of which he was president. Mr. Stickney kept no account there. In the interval between the failure of Jay Cooke & Co. and the commencement of his account with Riggs & Co. he kept the money in the safe at the National Safe Deposit Co.

Mrs. MARION CUTTER testified as follows, the oath being waived by counsel for defendants:

I am a daughter of the late Amos Kendall. Before my present marriage my name was Mrs. Babcock. My father died Nov. 12, 1869. I knew the late William Stickney. I do not know what his means were at the time of his marriage. I was present at the marriage, in 1852, on the 15th of January. About the time I was twenty-one years of age my father gave me $10,000 of Washington and New Orleans telegraph stock. He gave all the daughters the same. Mr. Stickney was a lawyer when he married, I think, but not practising. I don't know that he was doing anything then.

133 (Examination of books resumed.)

May 13, 1875.—Executors' book, page 80, shows the receipt of interest from Chase		$380 60
May 21, 1875.—Same book, same page, shows the receipt of interest from Root		$380 60
June 7, 1875.—Same book, same page, shows the receipt by the executors of		1,260 41
		2,021 61

June 7, 1875.—Same book, same page, shows payment to the complainant of her share of the above receipts after deducting commissions, said share being $480.13.

June 7, 1875.—The bank book and check book of the said William Stickney show a deposit to his credit of		$330 86
Made up of the share of the complainant in the above-mentioned sum of $1,260.41, being	$299 35	
And the commissions of the said Wm. Stickney	31 51	

Nov. 5, 1875.—Executors' book, page 82, shows the receipt of interest from Chase & Root, $761.20. Same book, page 83, under date of Nov. 12, shows the payment of revenue tax, $253.37, and 5 per cent. commissions upon the above collection, and distri-
134 bution of the balance of the said interest in four shares and the payment to the complainant of her share, being $117.44. The check book of the said William Stickney, under date of Nov. 12, 1875, shows the shares of all the distributees in the above-named

sum, excepting that of the complainant, checked out by the said William Stickney.

April 24, 1876.—Executors' book, page 85, shows the payment to the complainant of her share of $463.40, interest from Smith, said share being $110.06.

April 22, 1876.—The check book of the said William Stickney shows a deposit of the interest collected from Smith, $463.40, and that the distributive shares of all, excepting the complainant, were checked out and paid.

May 10, 1876.—Executors' book, page 85, shows the payment to the complainant of her share of $761.20, interest received from Chase and Root, said share being $180.79.

May 12, 1876.—The check book of the said William Stickney shows a deposit to his credit of		$199	82
	Being the amount of the said share of the complainant in the Chicago interest		
135		180	79
And the commission of the said Wm. Stickney		19	03

June 30, 1876.—Executors' book, page 84, shows the receipt of the Chicago rents, $738.33.

June 30, 1876.—Same book, page 85, shows payments on account of the said Chicago property, $521.02. The check book of the said William Stickney, under date of July 1st, 1876, shows a deposit to his credit of the balance of the said rents, being, $217.31. Same book, page 85, shows a payment to Mrs. Stickney, the complainant, of her share of the balance of the said rents, being $54.33.

Dec. 19, 1876.—Executors' book, page 86, shows the receipt of $815.33 by the executors, and on page 87, same date, shows the payment to the complainant of her share of the above, $193.70.

The bank book and check book of the said William Stickney show a deposit to his credit of the said sum of $815.33 and checks given for the shares of all the distributees, excepting that of the complainant.

Dec. 29, 1876.—Executors' book, page 86, shows the receipt on account of Chase and Root notes of $17,713.82.

136 Jan. 3, 1877.—Same book, page 87, shows the payment to the complainant of her share, being $3,720.86.

The bank book and check book of the said William Stickney show the payment by check of the shares of each of the distributees in the above amount, excepting that of the complainant, and the deposit by Mr. Stickney of the whole amount to his personal credit.

Jan. 2, 1877.—The check book of William Stickney shows one check to the complainant of	$100	00
And ten (10) of $50 each	500	00
	$600	00

Feb. 12, 1877.—Executors' book, page, 88, shows cash received from Chicago for rent, $233.33.

March 26, 1877.—Same book, same page, shows cash received from Chicago for rent, $532.80.

March 30, 1877.—Same book, same page, shows cash received on account of Chase & Root notes of $350.00.

Feb. 13, 1877.—The bank book of the said William Stickney shows a deposit to his credit of		$233 33	
137 Which also appears upon his check book, under date of February, 1887, and correction under date of March 30, 1877. The said bank book and check book, under date of March 26, 1877, show a deposit to his credit of		532 80	
And under date of March 30, 1877, the said books show a deposit to his credit of		350 00	
And the payment by check of the shares of all the distributees, except complainant's.			
		$1,116 13	$1,116 13

July 19, 1877.—Executors' book, page 88, shows a receipt of cash from Chicago for rent of $417.60. Page 95, under date of Aug. 22, shows the payment to the complainant of her share of the above, after deducting commissions, being $99.18.

The bank book of the said William Stickney, under date of July 19, 1877, shows a deposit to his credit of $417.60, and the said check book, under date of August 14, shows the payment of the shares of each of the distributees, excepting the complainant's.

Sept. 8, 1877.—Executors' book, page 94, shows the receipt of Chicago rents of		$374 25
And October 9, 1877, Chicago rents		225 00
		$599 25

138 Under date of October 10 the said executors' book shows the payment to the complainant of her share, one-fourth of the said rents, after deducting commissions, being $142.32.

The said bank and check books, under date of Oct. 9th, show a deposit to the credit of William Stickney, as received from Chicago rents | $225 00
And on the 10th of October from Chicago rents | 374 25 | $599 25

The said check book, under date Oct. 10, shows the payment to all the distributees except the complainant.

Oct. 29, 1877.—Executors' book, page 94, shows the receipt of cash from rent of stable		$20
Same page, under date of Dec. 24, shows receipt of stable rent		19
Same page, under date of Dec. 24, shows receipt of stable rent		19
Page 96 shows the receipt of Chicago rents		413 28
Amounting in all to		$471 28

On page 98, under date of Dec. 24, executors' book shows payment to the complainant of her distributive share of the said amount, after deducting commissions, taxes paid, and cost of plumbing, being $104.64, and the bank books and check books of the said
139 William Stickney, under date of December 24, show a deposit to his credit of $413.28, and payment of the above distributive share to each of the distributees except the complainant.

Jan. 22, 1878.—Executors' book, page 96, shows receipt of Chicago rents and stable rent, amounting to $244, and on page 97, under same date, shows the payment to the complainant of her distributive share of the same, being $57.95.

The bank book and check book of the said William Stickney, under the same date, show a deposit to his credit of $244, and payment to each of the distributees except the complainant.

Feb. 25, 1878.—Executors' book, page 98, shows receipt of rents from Chicago and stable, $275, and on page 99, under same date, shows payment to the complainant of her share, $65.91.

The bank book and check book of the said William Stickney, under same date, show a deposit to his credit of $275, and payment by check to each of the distributees except the complainant.

March 20 & Ap'l 20, 1878.—Executors' book, page 98, shows receipt of stable rents, amounting to $38, and on page 99, under
140 date of May 2nd, shows payment to the complainant of her distributive share, being $9.03.

The check book of the said William Stickney, under same date, shows the payment of their distributive shares to each of the distributees except the complainant.

June 15, 1878.—Executors' book, page 98, shows receipt of Chicago rents	$332 36
And under date of June 24, stable rent	7
Making in all	$339 36

Same book, page 99, under date of June 24, shows payment to the complainant of her distributive share, $80.60.

The bank book and check book of the said William Stickney, under date of June 24, show a deposit to his credit, as received from Chicago rents, $332.36, and payment to each of the distributees except the complainant.

Sept. 10, 1878.—Executors' book, page 98, shows receipt of Chicago rents and rent of stable, $245.45, and on page 99, under same date, payment to the complainant of her share, being $58.30.

The bank book and check book of the said William Stick-
141 ney, under date of Sept. 30, show a deposit to his credit of the balance of the said sum of $58.30, after certain small disbursements, said balance being $36.14.

Oct. 3, 1878.—Executors' book, page 100, shows receipt of Chicago rents, $260, and payment to the complainant of her share, being $61.75.

Nov. 14, 1878.—Executors' book, page 100, shows receipt of Chi-

cago rents, $256, and payment to complainant of her share, which was $60.80.

The bank book and check book of the said William Stickney, under date of Nov. 21, show a deposit to his credit of $335.22, made up in part of the above-named share of the complainant in the Chicago rents, $60.80.

Dec. 6, 1878.—Executors' book, page 100, shows receipt of rents from Chicago and stable, $276.66, and the payment to the complainant of her share of the same, being $58.27.

It appears from the said books that the accounts were kept by Mr. Jones from September 7th, 1878, to Dec. 13, 1878, after which
142 they were resumed by Mr. Stickney.

Adjourned to Tuesday, Oct. 31, at 7.30 o'clock p. m.

TUESDAY, *Oct.* 31, 1882.

Hearing pursuant to adjournment.
Present: Counsel on both sides.
(Examination of books resumed.)

Jan. 11, 1879.—Executors' book, page 100, shows receipt of rents from Chicago and stable, $260, and payment to the complainant of her share of the same, $57.62.

Feb. 7, 1879.—Executors' book, page 102, shows receipt of rents from Chicago and stable, $263.15, and payment to the complainant of her share of the same, being $62.44.

Nov. 13, 1878.—Executors' book, page 102, shows receipt from the estate of Jay Cooke & Co. $35 50

And same book, same page, under date of Feb. 19, 1879, shows receipt from the estate of Jay Cooke & Co. 300 00

$335 50

And on page 103 is shown the payment to the complainant of her share of the same, being $79.43.

The bank and check books of the said William Stickney,
143 under date of Feb. 19, 1879, show a deposit to his credit of $300, received from the estate of Jay Cooke & Co., and the payment of their respective shares of the $335.50 to each of the distributees except the complainant.

March 8, 1879.—Executors' book, page 102, shows receipt of rents from Chicago and stable. $268, and the payment to the complainant of her distributive share of the same, being $63.59.

April 10, 1879.—Executors' book, page 104, shows receipt of rents from Chicago and stable, $275. and the payment to the complainant of her distributive share of the same, being $65.25.

May 9, 1879.—Executors' book, page 104, shows receipt of rents from Chicago and stable, $185, and the payment to the complainant of her distributive share of the same, being $43.88.

Aug. 20, 1879.—Executors' book, page 104, shows receipt of rents from Chicago and stable, $274.05, and payment to the complainant of her distributive share of the same, being $62 46

Sept 6, 1879.—Executors' book, page 106, shows receipt of rents from Chicago and stable, $266.66, and payment to the complainant of her distributive share of the same, being
144 ..... 63 33

(The above two shares aggregate) $125 79

The bank book and check book of the said William Stickney, under date of Sept. 24, show a deposit of $325 to his credit, made up in part of two shares of the complainant in the Chicago and stable rents, one 62 46

And the other 63 33

$125 79 $125 79

Oct. 6, 1879.—Executors' book, page 106, show- receipt of rents from Chicago and stable, $266.66, and payment to the complainant of her distributive share of the same, being $63.33.

Nov. 7, 1879.—Executors' book, page 106, shows receipt of rents from Chicago and stable, $266.66, and payment to the complainant of her distributive share of the same, being $63.33.

Dec. 8, 1879.—Executors' book, page 106, shows receipt of rents from Chicago and stable, $240, and payment to complainant of her distributive share of the same, being $57.00.

Dec. 9, 1879.—Executors' book, page 108, shows receipt of
145 proceeds of sale of Chicago property, $33,370.88, and payment to the complainant of her share of the net proceeds of the same, said share being $7,770 89

The bank and check books of the said William Stickney, under date of Dec. 23, 1879, show a deposit of the said distributive share of $7,770 89

Together with the commissions of the said Wm. Stickney 834 27

Making the sum of the deposit $8,605 16

It is stipulated and agreed that the foregoing amounts and figures are taken from the books containing an account of the transactions of the said William Stickney, and kept in his own handwriting or that of his authorized agent.

Mr. Selden offers in evidence the will of the late Amos Kendall, of which a copy is filed as an exhibit to the bill of complaint, and also offers in evidence all the exhibits filed with the said bill of complaint.

Mr. Selden offers in evidence an exemplified copy of letters testamentary to William Stickney and Robert C. Fox, executors on
146 the estate of the said Amos Kendall, which is marked Complainant's Exhibit No. 2.

Mr. Selden offers in evidence copies of the accounts of the said

executors, which are marked Complainant's Exhibit No. 3; also a copy of the inventory of the estate of the late William Stickney, marked Complainant's Exhibit No. 4; also a receipt of the complainants to the executors of the said Amos Kendall, dated Oct. 6, 1879, as tending to show the manner and form of her receipts, which is marked Complainant's Exhibit No. 5.

It is admitted that the said William Stickney died seized of all the real estate described in the bill of complaint, and that the defendants and the male grantors in the deeds, of which exhibits to the bill are copies, are the sole heirs-at-law of the said William Stickney.

The defendants also admit the averments of the seventh paragraph of the bill of complaint as to sublot 72, in square 242, and the incumbrance thereon, reduced by the said William Stickney by payments to $6,000, which was treated by him as a personal debt.

147 Mr. Selden offers in evidence a check of the executors, Fox and Stickney, to the complainant of July 1st, 1872, for $17,123.75, which is marked Complainant's Exhibit No. 6.

ROBERT C. FOX sworn.

Examined by Mr. SELDEN:

I am one of the executors of the last will and testament of Amos Kendall, deceased; also his son-in-law, and the same person whose name appears in the proceedings in the orphans' court relating to that estate. I knew the late William Stickney, but not at the time of his marriage. Mr. Kendall died in Nov., 1869. Mr. Stickney was secretary or clerk to Mr. Kendall at a salary of $100 per month and board of himself and his family. That was about 1857. He was also the secretary and treasurer of the Columbia University. (Memorandum handed to witness to refresh his recollection, and he proceeds:) Mr. Stickney was elected secretary and treasurer of Columbia University July 22, 1871, and his compensation fixed at five (5) per cent. on collections of rents and tuition fees, with an allowance of $500 per annum for clerk hire. This continued until May 31, 1873, from which date his salary was increased to $1,800, and so continued until June 30, 1877, when the salary was fixed at $600

148 per annum, and so continued until the 15th of October, 1881. In the distribution of the estate of Amos Kendall we divided the money and took receipts of the distributees. I took Mrs. Fox's receipt, and told her I had the money. I gave Mr. Cutter his wife's share. I saw that we had Mrs. Stickney's receipts. We paid the money to the husbands and took the receipts of the women. I don't recollect that we ever paid any money directly to Mrs. Stickney. Mr. Kendall gave Mrs. Fox $10,000 of Washington and New Orleans telegraph stock. Mr. Stickney died Oct. 13, 1881. I was with him at the time. His death took me by surprise. I didn't consider him dangerously ill. I didn't see him from the time he was taken until he was unconscious. After the latter part of 1878 I made the distribution of the estate of Mr. Kendall. I paid Mrs. Stickney's

share to her husband. I received the Chicago rents and distributed them. I received the drafts. Since 1879 nothing has been distributed except the rent of the stable, about $12 per month.

My business is that of real estate broker. I have been in the business from Nov. 1, 1866. I know the value of real estate.
149 I know most of that which Mr. Stickney owned and the value of it.

Square 182, sublot- 37 and 38, on Rhode Island Ave., I value at $5,500. I had expressed to Mr. Stickney in his lifetime the opinion that that would be a good price in cash. The property might bring $6,000 on time or on the usual terms of sale—that is, one, two, and three years.

Lot 72, square 242, on Vermont Ave., I consider the house and lot worth between $10,000 and 11,000 on the usual terms of sale.

House No. 601 M St., known as the homestead and comprising all the lots in square 448 mentioned in the bill, needs repairs sadly. I would consider it worth from $20,000 to $22,500. I would advise its sale at $20,000. I have tried to find a purchaser, but have not had an offer for that property for four or five years.

Square 624, sublots 41 and 45, 1st and H Sts., the former with two frame houses, I consider worth from $1,250 to $1,400 each; lot 45, with the brick house, $3,000.

Square 625, sublots 136 and 156, improved by brick houses, I have not examined specially. Property is very dull there, having but little sale. I should say they were worth from $4,500 to $5,000.

150 Square 523, part of lot 1, M St., is worth not over $1.00 per square foot. I don't know about the improvements on this property.

Square 892, sublots 21 and 22, on 7th St. N. E., improved by a frame house and having a side lot, known as one of Moses Kelly's houses. The house back of this, of the same kind, was bought in a sale under a deed of trust for $2,250*0*, that being the amount of the incumbrance. This house ought to be worth $2,000.

Square 373, part of lot 1, 9th St., bet. I and K, improved by a frame house, worth $2,500 to $2,750.

I have known this property for several years. My valuations are based upon that knowledge and upon my real estate experience as applied to the usual terms of sale. The homestead was being built in the fall of 1868 and was occupied from 1869. Mr. Kendall died in that house. It was practically completed at that time.

The complainant and her husband lived upon terms of confidence and intimacy.

Cross-examination by Gen. HENKLE:

I first knew Mr. Stickney in 1856. He was a clerk in one of the departments, and I think he was married in 1852. I don't
151 know how long he remained in the department. Mr. Kendall was largely interested in the telegraph business. He offered Mr. Stickney a clerkship, as I have stated. Mr. Stickney was afterwards president of the National Savings Bank.

By agreement of counsel, the following letters and statements, to wit, that of E. M. Gallaudet, that of Robert C. Fox, secretary and treasurer of Columbia University; that of B. P. Snyder, president of the National Savings Bank; that of B. P. Snyder, president of the National Safe Deposit Company, and that of E. Whittlesey, secretary of the board of Indian commissioners, are admitted as evidence in this proceeding and marked Complainant's Exhibit No. 7.

Adjourned to Thursday, Nov. 2, at 2 o'clock p. m.

STICKNEY *vs.* STICKNEY.

THURSDAY, *Nov.* 2, 1882.

Hearing pursuant to adjournment.

Present: Mr. Selden, Mr. Henkle.

Mrs. STICKNEY recalled.

By Mr. SELDEN:

152 Q. You are the plaintiff in this cause?

A. Yes, sir.

Q. And at the age of 24 years you were married—on the 5th of January, 1852—to the late William Stickney?

A. Yes, sir.

Q. And you are a daughter of the late Amos Kendall?

A. Yes, sir.

Q. When did your father die, if you please? Exactly, as to date.

A. The 12th of November, 1869.

Q. At the time of your marriage with your husband, what did you then know, if you knew anything, to be his circumstances in life?

A. My husband very honorably stated his circumstances. He told me that he had no means, and was dependent entirely upon his own exertions.

Q. Do you know at what time the house in which your husband resided at the time of his death was begun and when it was finished?

A. It was begun in 1868 and finished in 1869.

Q. Do you know, from any information other than such
153 as you may have acquired from your husband, in what manner that property was acquired and when it was paid for.

General Henkle objects to the question.

A. No, sir; I do not know—not from actual knowledge. I cannot say.

Q. Before the death of your father what, if any, means had he given you out of his estate?

Objected to by General Henkle.

A. My father gave me $10,000 in telegraph stock, as he did his other children.

The examination of this witness is discontinued for the present.

BENJAMIN P. SNYDER sworn.

By Mr. SELDEN:

Q. Were you acquainted with the late Mr. William Stickney; and, if so, to what extent and under what relations, if any, of acquaintance?

A. Yes, sir; I had known him for a number of years. He was the president of the National Savings Bank and also of the Safe Deposit Co., and I was the treasurer of the Savings Bank and secretary of the Safe Deposit Co.

154 And in your business relations what was the degree of intimacy between you?

A. I should say it was very intimate—very close.

Q. Did it throw you together daily?

A. Almost so—whenever he was in the city.

Q. Were you present with Mr. Stickney during his last illness?

A. No, sir.

Q. How shortly before his death, to your knowledge, did he transact business of any kind?

A. I think the day previous.

Q. What was the character of the business he thus transacted?

A. He had borrowed some money from Riggs & Co.—$1,000 or $2,000—and the note had been renewed occasionally at his convenience, and I was the endorser on that note. It fell due, I think, the day before his death, and in the morning Mr. Frank Stickney, his brother, visited me, and in consequence of that visit I sent him a note filled out for signature, and also a check for the partial payment on account of interest and principal. He signed them and returned them to me, and I took them to Riggs & Co., took up the old note, gave the new one, and paid the check. The signa-

155 ture was perfectly clear and very easily recognized by any one knowing his handwriting—certainly myself. The only difference that I noticed in his signature was, it seemed to show that he was very weak—that his hand trembled somewhat—but no one not closely connected with him would have noticed it.

Q. How was his illness regarded by the officers of the bank and in the Safe Deposit Company—as serious or the reverse?

A. Not at all serious. In fact, when the note came back to me I expected to see him the next morning at the bank, or certainly in a few days; but I should not have been as much surprised to see him walk in the office as I was to hear of his death.

Q. Where, if you know, did Mr. Stickney leave, at the time of his death, the evidence of his investments and such securities as he had?

A. I judge in his box in the vaults of the Safe Deposit Company. His habit was to keep everything of value belonging to him there, without it was money.

Q. What, if any, discovery did you as an officer of the company make as to his box there after his death?

156 A. I think after the funeral Mrs. Stickney came to the

bank and made a search of the box. I was positive that there was no will, and I am pretty sure she thought the same.

Q. Who was present at the — Mrs. Stickney was thus examining the contents of the box of which you have spoken?

A. If I recollect aright, Mrs. Stickney, yourself, and myself.

Q. While Mrs. Stickney was examining the contents of that box, or immediately after, and during her presence at the bank on that occasion, did she manifest any surprise at the discovery which she had made or not?

General Henkle objects to the question.

A. She did, decidedly. She seemed very much disappointed and very greatly distressed at the condition of affairs exhibited by the contents of that box; so much so that it was a very painful matter for me to witness.

Q. Did you participate in the examination?

A. I did.

Q. And in whose name did you discover the contents of the box to be?

157 A. Everything was in Mr. Stickney's name, so far as I recollect.

Q. Are you acquainted with the character and value of the personal estate left by Mr. Stickney?

A. I think with a schedule I could probably give some opinion about it.

Q. You were, I believe, one of the appraisers of the personal property of that estate?

A. Yes, sir; I was, of the household effects.

Q. I hand you an exhibit filed in this audit, marked "Complainants' Exhibit No. 4," being an authenticated copy of the appraisement returned by yourself and one Mr. Geo. E. Johnson of the personal estate of Mr. Stickney, and, with that to aid and refresh your memory, ask you to state, if you please, what the value of the personal estate left by the late Mr. Stickney was?

General Henkle objects to the question because it is immaterial to the issue.

A. I have looked this over, and I don't see any reason for modifying the appraisement made at that time.

Q. What steps did you take at the time to ascertain correctly the true value of the personal estate of the late Mr. Stickney?

158 A. The household effects we made a personal inspection of, and valued them according to our best judgment as to what they would bring if sold. I think the appraisement was pretty liberal. As to the stocks, bonds, and notes, we appraised them at their market value. I think the notes were appraised at their face. There is one note, called the Hume note, on which there might have been some little reduction from its face, because I think there was some doubt that it would bring its face value at that time. The stocks were appraised at about what they would bring in the market.

Q. Are you familiar with the value of real estate in this city?

A. Somewhat.

Q. What has been the extent of your experience in that connection and the necessity for forming your judgment in that respect?

A. The savings bank which I represent has loaned pretty largely on real estate, and in numbers of cases I have made the valuations for the loans myself, and always examined them and passed upon them after they were made. In that way I necessarily be-
159 came familiar with the value of real estate in this city and the different prices of it.

Q. You may state, if you please, whether you were familiar with the character, situation, and value of the real estate left by the late Mr. Stickney.

A. Yes, sir; I was.

Q. State, if you please, what, in your judgment, upon the usual terms of sale, is the present market value of the various pieces of real estate left by the late Mr. Stickney at the time of his death?

A. About the time of Mr. Stickney's death, or a few days after, I made a careful estimate of the value of all his real estate. The following is about the estimate, as near as I can recollect it, that I made at the time: Sublots 37 & 38, square 182, Rhode Island Ave., at $5,000. I value it now at $5,500, because I think there is an offer of that amount for it if the title could be made. Sublot 72, square 242, Vermont Ave., at $11,500. I think it might be sold for that. Sublot 136, square 365, west side of Columbia street, at $3,000; sublot 156, square 365, east side of Columbia street, at $2,300; square 448, the homestead, No. 601 M St. N. W., at $22,500; sublot
160 1, square 523, No. 307 M St. N. W., at $4,000; sublots 41 & 45, square 624, near Government Printing Office, I have not seen for some time, but I should not put the two pieces over $3,000; sublots 21 & 22, square 892, 8th St. N. E., at $2,000; sublot 1, square 373, at $3,000.

Q. In your judgment, would the residence bring the sum of $22,500 if offered at sale at present?

A. I do not believe it would sell for that figure. We have a house on M St., farther west, which cost a great deal more, and it will not sell at that figure.

Q. What, in your judgment, would be the best price obtainable for the homestead if actually offered for sale under the ordinary terms?

A. It might sell for $20,000.

Q. Do you think you could sell it for any more or not?

A. I doubt it. I only judge from the difficulty we have in selling a similar piece of property. The property is too fine for the location.

Q. What, if you know, is its present condition with reference to repairs?

A. I have not been in the house for a year, I think.

161 Q. Do you know when the firm of Jay Cooke & Co., in this city, failed?

A. Yes, sir; I recollect it very distinctly.

Q. What month and year?

A. I think the 18th day of September, 1873. I could not give the exact date. That is my impression.

Q. After the failure of that bank where, if you know, did the late Mr. Stickney keep his bank account?

A. My opinion is that he kept his money for some time in his safe in the Safe Deposit Company and after that time at Riggs & Co.'s.

Q. That date you don't know?

A. No; his books will show that.

By consent of the *the* parties counsel for the complainant offers in evidence a certain entry in the handwriting of the late Mr. Stickney, in one of his stub books kept by him, as follows:

"W. S. Stickney.
"Xmas gift, $1,000.00."

Q. I will call your attention to the entry just offered in evidence, for the purpose of refreshing your recollection, and inquire whether you recollect anything about the transaction to which the entry purports to relate.

162 A. I recollect it distinctly. When Mr. Stickney wrote the check he showed it to me and said it — a gift to Will. from his mother.

Q. Where did that conversation occur?

A. In the bank at the time he wrote this check. We had some pleasant conversation about it, and in the course of his remarks I recollect his saying to me that it was out of the Chicago money, and Jennie insisted on his giving Will. that $1,000.

General Henkle wishes to reserve an objection that this is a contradiction of the writing.

Q. He told you, then, as I understand it, that the $1,000 was a present which he had been requested by Mrs. Stickney to give to her son Will. and that that $1,000 came from the proceeds of certain Chicago money?

A. Yes, sir; but it was not stated in that way. It was stated in the way I have just said.

Q. Did Mr. Stickney explain to you at that time from what source the Chicago money had been derived?

A. I think that a piece of property belonging to the Kendall estate was sold in Chicago just before that. Mr. Jas. E. Fitch
163 and myself made two trips out to sell the property under a deed of trust. The first time we failed on account of a false bid. We went out again and sold it.

Q. The Chicago property of which you speak was a part of Mr. Kendall's estate, and was so known to be by Mr. Stickney when he made his statement to you?

A. Yes, sir; it was.

Q. You knew Mr. and Mrs. Stickney quite well?

A. Yes, sir.

Q. Their relations, of course, were those of confidence and affection between husband and wife?

A. Yes, sir.

It is admitted by counsel for the defense that the relations between Mr. Stickney and her husband, during their married life and after the death of her father, were those of confidence and affection.

Cross-examination by Gen. HENKLE:

Q. How long was Mr. Stickney sick, in his last illness?

164 A. If I recollect correctly, from Saturday night to Thursday morning. He was taken ill on Saturday night, so I was informed.

Q. Do you know what the disease was?

A. I understood inflammation of the bowels.

Q. Was it an acute attack?

A. So I understood.

Q. Did you see him during his illness?

A. I did not.

Q. Then you do not speak from any personal knowledge?

A. No, sir; simply from hearsay.

Q. When you spoke of your surprise at hearing of his death it was not from any knowledge that you had of his condition?

A. Only from information that I got from his brother the morning before.

Q. Have you had any conversation with Mr. Fox with regard to the values of this property, compared opinions with him?

A. I don't think I have spoken to him on the subject.

Q. Do you know about Mr. Stickney's bank accounts when he began, for instance, his account in Mr. Riggs' bank?

A. I do not recollect now when it was.

Q. Do you know anything about Mr. Stickney's bank account with Riggs & Co.?

165 A. I was intimate with it in a sense. I think I went with him the day he opened his account. I am not positive. Very frequently, when he was going away in the summer time, I would go with him to Riggs & Co., and he would transact whatever business he had, and if there was anything he wished me to attend to at the time he would talk it over with me and advise me about what he wanted me to do.

Q. Can you tell us anything about where he derived these monies from that are shown to have been deposited by this bank book?

A. I could take the stubs of his check book and possibly tell you where the most of it came from and a great deal about his transactions. He kept his accounts mainly on his stub book.

Q. I understand you to say that the day after Mr. Stickney's funeral Mrs. Stickney came to the bank and Mr. Selden came there afterwards?

A. Yes, sir.

Q. She had the key of Mr. Stickney's box in the deposit company's safe?

A. Yes, sir.

Q. And you opened the box and took out the contents?

166 A. Yes, sir.

Q. Do you remember what the contents were?

A. All the contents of the box are contained within the inventory returned to the orphans' court and marked in this cause Complainant's Exhibit No. 4.

Q. What kind of a business man was Mr. Stickney; I mean by that whether he was regarded as a good business man or not?

A. Yes, sir; he was so regarded.

Q. He was an active, enterprising, intelligent business man, was he?

A. I could not exactly say that. A business man gives up everything to making money, but Mr. Stickney did not do that.

Q. Did you not regard him as an intelligent business man?

A. Yes, sir.

Q. Did not you regard him as a man of good business judgment?

A. Mr. Stickney was easily influenced, and he would do things sometimes that his judgment did not approve of.

Q. How was his judgment when he was not influenced to go against it?

167 A. Very fair.

Q. He was not an idle man?

A. No, sir.

Q. Industrious?

A. More industrious in his church affairs and charities than in making money.

Q. His official employments did not occupy all of his time?

A. They did during the day, most of it.

Q. Do you know whether he did any business on his own account outside of his official business, whether he bought or sold stocks or bonds or notes?

A. No, sir.

Q. Did Mr. Stickney, when he had surplus money of his own, invest it in buying bonds, stocks, and other securities, or in loaning it upon notes?

A. As a matter of fact, I do not think Mr. Stickney ever cared or showed any desire to increase his principal. When money would come in from an investment he would reinvest it.

Q. What kind of investments were coming in; from what sources were monies coming in?

168 A. For instance, he had $10,000—I think it was $10,000—come in from John Wilson, formerly an auditor of the Treasury. He loaned that money to Mr. Plant on the F-St. house.

Q. He had before that loaned that money to Mr. Wilson?

A. Yes, sir.

Q. Do you know when that was?

A. That was before our intimate business relations began.

Q. When did they begin?

A. In Nov., 1870.

Q. And this loan of $10,000 to Mr. Wilson was made before that?

A. Probably. I could not say.

Q. Do you know when it was paid?

A. I think in 1877.

Q. Do you know what rate of interest it bore?

A. 9 per cent., I think. I am not positive. I could not tell you without reference to the note or deed of trust.

Q. Your recollection is 9 per cent.?

A. My impression is.

Q. Was the interest payable annually or semi-annually, or how?

169 A. Whenever Wilson had the money to pay it with.

Q. How was it secured?

A. On a house on New York avenue, on the south side, between 13th and 14th.

Q. When that money was paid Mr. Stickney reinvested it by loaning it on deed of trust to Mr. Plant, did he?

A. I think he deposited it in Riggs' Bank. Subsequently he gave me a check for $10,000 and I paid Mr. Plant the money. Mr. Stickney loaned it to Mr. Plant upon a note secured by a deed of trust on the F-St. house.

Q. Has that money been paid or was it paid before Mr. Stickney's death?

A. It was not.

Q. What rate of interest was that loaned upon?

A. Originally 9; afterwards reduced to 8 per cent. Everything that I know you will find in those stub books of his.

Q. The interest was paid, was it?

A. Yes, sir.

Q. Annually?

A. Monthly. There were some arrears of interest, about a year's, when he died.

Q. Will you be kind enough to give us any other invest-

170 ments that fell in within your acquaintance with Mr. Stickney?

A. I think the Hume note is about the only thing.

Q. That was money that he loaned?

A. Yes, sir.

Q. When did he do that?

A. I could not tell. That was in the early time of our business relations.

Q. Was that Tom Hume?

A. Yes, sir.

Q. How much was it?

A. I think $9,000, but I am not positive.

Q. That loan was made in your early acquaintance?

A. Yes, sir. I think it was the first year he became president of the bank, and that was in 1872, I think. I would not state positively. I state from recollection.

Q. And that note has never been paid?

A. I think it was paid by the sale of the property.

Q. Since Mr. Stickney's death?

A. Yes, sir.
Q. Do you know of any other?
A. I don't think he had any other investments in real estate;
171 none that I recollect. He had some few other real estate notes; I think one of Mr. Jones. He made him a real estate loan.
Q. Who was he?
A. Thomas R. Jones. He was a teller of our bank.
Q. What was the amount of that?
A. I do not know.
Q. Can you give us approximately?
A. Probably $4,000.
Q. What rate of interest was that?
A. That I don't know.
Q. Do you know when the loan was made?
A. That I could not tell you; four or five years ago. It was a matter between him and Mr. Jones and I never knew much about it.
Q. Do you know about his buying any stocks or bonds?
A. Yes; I do. He bought some Columbia Bank Note stock.
Q. How much?
A. I don't think I could tell you. I could not tell you the number of shares.
Q. Have you any idea how much he paid for it?
A. $125.
Q. Do you know how much in the aggregate he paid for that stock?
172 A. I could not tell you how many shares. That was about the price, I think. He paid $138 for some. I guess it would aggregate about $5,000.
Q. Well, what other investments in stocks?
A. He bought some Washington Brick Machine stock.
Q. How much of that?
A. I think $10,000 of that—no; $5,000, I think. Either $5,000 or $10,000.
Q. When did he buy that?
A. When the concern was started.
Q. When was that?
A. 1874 or 1875, I think. By reference to the date of organization I could tell.
Q. What else?
A. He bought some National Brick Machine stock.
Q. How much of that?
A. I don't know how much of that he bought. He made a payment of $5,000.
Q. When was that?
A. I guess that must have been in 1875 or 1876.
Q. Anything else?
A. He bought some Safe Deposit Company stock.
Q. How much of that?

173 A. Well, he bought and sold at different times. I don't think he had more than $2,000 or $3,000 invested in that.

Q. Do you mean when he died?

A. Yes; that was about what it cost him. He had about that at the time of his death.

Q. You say he bought and sold that stock?

A. Yes, sir.

Q. Dealt in it?

A. That is, he bought it and traded.

Q. Do you know of any other stocks or bonds?

A. I think he bought some steamship stock—Inland & Seaboard Coasting Co. It was originally of the New York, Washington and Georgetown Steamship Co.

Q. How much of that?

A. I don't know what he originally held. What the estate now holds is the product of that purchase. There was a consolidation, a transfer, or a sale to the Inland & Seaboard Coasting Co.

Q. What was the result of it?

A. They got two or three shares of one for the other. They capitalized their earnings. They had a large surplus and they put that in the new company as money.

174 Q. Do you know how much he had?

A. I could not tell; I suppose about one-third of what he has of the Inland & Seaboard Coasting Company.

Q. What is that?

A. The inventory will show.

Q. How much did he invest in that stock in money?

A. I could not tell.

Q. Can you approximately?

A. I could not. His stub book will show it, I have no doubt. It will show the purchase of it.

Q. Can you take the stub book and tell us?

A. Not now; I should have to search them through.

Q. What other stocks did he have, to your knowledge, or bonds?

A. I think that is about all, as near as I can recollect.

Q. Does that cover all the dealings of Mr. Stickney in bonds or stocks during your acquaintance with him?

A. So far as my knowledge goes.

Q. Do you know anything about his having any stock in the O-street railroad?

175 A. I think he had some three or four shares—something of that kind.

Q. A small amount, was it?

A. Yes, sir; somebody importuned him to take it and he took it. He did not think it was worth anything when he took it.

Q. Do you know how many shares?

A. I think one, two, three, or four, and I think he paid $25 per share.

Q. Do you know anything about the Journal of Commerce stock?

A. That was before my time.

Q. And you don't know anything about it?

A. I know that he had it.
Q. He had that when you first knew him?
A. I cannot say as to that. I knew him many years before we were intimate.
Q. Did he have it before 1870?
A. Yes; I should say so.
Q. How much of that stock did he have?
A. I think one share; I don't know.
Q. What was that?
A. It was valued all the way from $6,000 to $10,000. Sometimes he would place one value on it and again he would change his mind and place another one on it. He valued it as it yielded.
176 Q. You cannot tell us how long before 1870 he owned it?
A. No, sir.

Redirect examination by Mr. SELDEN:

Q. Where, if you know, did all the money come from in these transactions which you have explained?
A. My understanding was that it was from the Kendall estate.

General Henkle objects to the answer, unless the witness shows how he understood it.

Witness states:

I understood it from a general knowledge of the family. I knew them for years previously to the time I became acquainted with Mr. Stickney intimately in business.
Q. Was your knowledge founded in any degree upon his private affairs?
A. No; it was a general understanding that Mr. Stickney was a poor man when I first knew him. I knew Mr. Kendall and most all the members of the family.

Recross-examination by General HENKLE:

Q. You say that it was a general understanding that Mr.
177 Stickney was a poor man; prior to Mr. Kendall's death, do you mean?
A. When I first knew him, I said.
Q. That was about 1852?
A. I could not say exactly when I first became acquainted with him, but I have known the Kendalls from that time.
Q. You say that these investments and the monies that Mr. Stickney handled came from the Kendall estate. I would like to ask you whether you speak of the time after Mr. Kendall's death or before?
A. I speak of the time after and before, also. My opinion is that Mr. Stickney made all of his money from or through Mr. Kendall.

General Henkle objects to the latter part of this last answer.

Q. You don't know where he got his money?
A. No.

Q. Do you know that at the time of Mr. Kendall's death Mr. Stickney had real estate in this city assessed for taxation at $47,000?

A. Yes; I presume that he may have had. I know that Mr. Kendall made his daughters or his sons-in-law a present of $10,000 each at one time.

178 Q. How do you know that?

A. Because Mr. Fox, who was my intimate — in the telegraph office, told me so.

Q. You have no knowledge of it, except as you derived it from Mr. Fox?

A. Yes, sir; that is all.

Q. Do you know where Mr. Stickney got the money to buy this $47,000 worth of real estate before Mr. Kendall's death—I mean of your own knowledge?

A. I think Mr. Stickney told me so. He told me that the money was furnished by Mr. Kendall.

Q. Did he tell you that Mr. Kendall furnished all the money to buy this real estate?

A. The greater portion of it. The residence, 601 M St., was furnished by Mr. Kendall. Mr. Stickney told me that. I am almost positive of it.

Q. Are you positive?

A. I am, absolutely.

Q. When did he tell you that?

A. During our business relations or intimacy; in the course of general conversation. I could not fix the date.

179 Q. Can you give us any connection in which he said it or how he came to say it?

A. He was talking of disposing of it, or trading it, and we were making up the figures as to what it cost him and what he was going to get for it. He told me then that it stood him between $37,000 and $39,000, and in that connection he told me where he got the money from.

Q. What did he say?

A. He told me that Mr. Kendall furnished the money.

Q. Did he say furnished it in cash?

A. I could not say that positively, but when a man says that to me I take it for granted it was cash. I so understood it.

Q. You understood that Mr. Kendall furnished him all the money with which he bought that property?

A. I did not say all. The expression was just about that—that Mr. Kendall furnished the money.

Q. You understood him to mean that he furnished all the money that went into that property?

A. That is what I understood.

Q. Do you know that he sold, about the time that he built that house, a piece of property to Mr. Spencer, on 6th St. and L,

180 for $7,000?

A. I do not.

Q. You don't know of his making such a sale?

A. I do not.

Q. At the time this property was bought and the house built your relations with Mr. Stickney were not intimate?

A. Simply as an acquaintance, I knew him. We were friendly.

Q. Did Mr. Stickney tell you that it was by gifts, or that Mr. Kendall had put him in the way of earning money?

A. If I recollect right, it was to be part of the portion that Mrs. Stickney was to get from the estate.

Q. He had advanced her?

A. Yes; that is about what I understood.

Q. Do you know whether that was charged to her in the distribution of his estate?

A. I do not.

BRAINARD H. WARNER sworn:

Examined by Mr. SELDEN:

Q. State your name, age, residence, and occupation.

181 A. Age, thirty-five (35) years. I reside in this city; am a real estate agent and auctioneer, and have been since 1869. I have an extensive acquaintance with real estate and its value in this city. I am familiar with the various pieces of real estate mentioned in these proceedings and left by the late William Stickney at the time of his death and of the values thereof, which values, according to the usual terms of sale, I now fix as follows:

Sublots 37 & 38, square 182, Rhode Island Ave., near 16th St., I value at $—.00.

Part of lot 1, square 373, 9th St., near I St. N. W., I value at $2,500.00.

Sublot 73, square 242, Vermont avenue, near Iowa Circle, at $12,000.00.

Sublots 156 & 136, square 365, with improvements, Columbia St., near P St. N. W., at $2,250 and $2,500, respectively.

Square 448, property corner of 6th and M Sts. N. W., the homestead, I should say $20,000 would be a large price for —, although it probably cost more. The location is bad for a fine residence.

Lot 1, square 523, 307 M St. N. W., at from $4,000 to $4,500.

182 Lot 41, square 624, on 1st St., cor. H St., with improvements, at from $2,500 to $3,000.

Lot 45, square 624, H St., near 1st St., at $2,500.00.

Lots 21 and 22, square 892, on 7th St. N. E., being improved by a two-story frame house and side lot, taking it for granted that it is in fair order, at $1,500.00.

ANNA B. JONES sworn.

Examined by Mr. SELDEN:

Q. You reside in the city of Washington?

A. That is my home.

Q. You know Mrs. Stickney, the complainant in this cause, and knew her husband during his lifetime?

A. Yes, sir.

Q. What degree of intimacy had you with them?

A. I lived with them as a member of the family about three years.

Q. And upon terms of actual intimacy?

A. Yes, sir.

Q. What, if any, communications did you ever know that passed between Mrs. Stickney and her husband in his lifetime respecting her share in the estate of her father, the late Mr. Kendall?

183 A. I recollect one conversation between Mr. and Mrs. Stickney in regard to the Chicago property.

Q. What was that conversation and where did it occur?

A. It occurred in the library, 601 M St. N. W. Mr. Stickney was sitting at his desk and Mrs. Stickney in an easy chair. I was present, but entered while they were conversing on this subject. I heard Mrs. Stickney say to Mr. Stickney, in reply to some remark that I had not heard, "Now, Will., I want you to invest this money in my name."

Q. Was that the term by which she usually addressed her husband?

A. Yes, sir.

Q. And what was the Chicago property or the proceeds of that property?

A. I do not know.

Q. To this request from his wife what response did Mr. Stickney make?

A. None. He looked at her, but made no reply.

Q. That is the only conversation you heard between them on the subject?

A. Yes, sir.

184 Cross-examination by General HENKLE:

Q. Will you be kind enough to indicate the time that was as near as you can?

A. I think it occurred between November, 1879, and the early part of 1880.

Q. Was it after the Chicago property had been sold?

A. I cannot remember.

Q. Was that all of the conversation you heard?

A. That was the main part of it.

Q. How do you know that the Chicago property or the proceeds of that property was the subject of that conversation?

A. Because I had heard enough of the conversation to know that.

Q. That is all you heard, I believe?

A. Yes, sir.

GEORGE H. PLANT sworn.

Examined by Mr. SELDEN:

Q. You have resided in Washington all your life, have you not?

A. Not quite that; 54 years.

Q. You knew the late Mr. Stickney, did you, sir?

A. Very well.

185 Q. With what degree of intimacy for the last ten (10) years of his life?

A. We were joint trustees for all the property that the National Savings Bank loaned money upon, with very few exceptions.

Q. And what was the degree of your personal intercourse during that period?

A. We were thrown together every day, and dozens of times a day. I was president of the Safe Deposit Company and he was president of the Savings Bank, and we both did business in the same building.

Q. And had, therefore, business interchanges?

A. Oh, yes; hundreds of cases.

Q. You may state, if you please, whether during your intercourse you, between yourselves personally, had many business transactions.

A. No, sir; the principal immediate transaction was the borrowing of $10,000 from Mr. Stickney.

Q. You did borrow $10,000 from him?

A. I did.

Q. I wish you to say what, if anything, Mr. Stickney ever communicated to you in his lifetime with respect to his recourses or title to any real estate that was in his name.

186 A. During our intercourse in buying and selling real estate he would sometimes buy real estate at auction and sometimes I would, but not jointly. On two or three occasions, but on one in particular—I think we were buying a piece of property down near the printing office—I laughed and said to him, "Mr. Stickney, you are buying a good deal of property." He said, "I am buying in part for my wife, with her means." That was with regard to different pieces of property that he would say that; several pieces; two or three at least; three or four.

Q. What else?

A. About three or four weeks, I suppose probably a month, before he loaned me the money, I wanted to raise $10,000, and I asked him if he could not loan me $10,000 to take up a note in an insurance company that failed, and I had about $10,000 to pay. He told me in the course of a few days he could let me know whether he could or do it not. He told me that he had not the money to spare himself just then; that his wife, he expected, in a few days would have about that amount of $10,000 coming into her hands, and that if she got it he would let me have it. In a few days afterwards he paid Mr. Snyder for me $10,000, and that is about all I know about it.

187 Q. These several pieces of property of which you speak—3 or 4 pieces—I think you said Mr. Stickney was buying on different occasons, was he not—not all at the same time?

A. No, sir; not all at the same time. It ran along at different sales for 10 or 12 years.

Q. And the conversations that you had with Mr. Stickney re-

specting the person for whom the investments were being in part made were at the several times that the purchases took place?

A. Yes, sir.

Q. And in substance the same information was on all those occasions imparted to you by Mr. Stickney?

A. Except one; that was a house on 10th St., right above M, which we loaned some money on, and I was valuing the property for the bank, and some question came up in the board of directors to the effect that I had valued it, they thought, a little too high. Mr. Stickney went out in the buggy with me to see the property, to satisfy the board of directors, and we went into the house and examined the property thoroughly, and he said to me, "I think the valuation a reasonable one, and if the bank don't seem to be satisfied with your appraisement I will take the property for my
188 wife." The bank was satisfied, and he didn't take the property.

Q. How many times did Mr. Stickney tell you in all that the investments which he was making were made in part for his wife, or from her means—as many as or less than a half a dozen, or what other number?

A. Certainly four or five times and probably more, but certainly that.

Q. And at different periods?

A. Yes, sir.

Q. And in reference to different transactions?

A. Yes, sir.

Q. When did you first know Mr. Stickney?

A. I don't know. It was before he was married.

Q. What were his means at that time?

A. I think that when he was married he was a poor man; that he was not a rich man, by any means.

Q. Did you ever ascertain from Mr. Stickney from what source the bulk of his income was derived?

A. Nothing, only casually. For instance, I would laugh at him and say, "Stickney, you are getting to be a rich man," and he
189 used to say, "Well, Captain, I want you to understand it is not all mine."

Q. How frequently did such conversations pass between yourself and Mr. Stickney?

A. I don't know of any time except that that I know of—that particular language. We were together every day when he was in town. Official business brought us together all the time. There was never a day that he was in town that we did not see each other unless he was home sick.

Q. Do you remember whether you ever heard him say anything in reference to the source from which the bulk of his income was derived?

A. No, sir; not any more than what I have stated.

Cross-examination by General HENKLE:

Q. You say that he was not a rich man before he was married. What do you mean by a rich man in that connection?

A. When I first knew Mr. Stickney and now are two different times. A rich man now is worth about $1,000,000. Then a man that was worth $50,000 was considered tolerably well off. When I first knew Mr. Stickney I don't think he was worth that
190 much. When I first knew him I do not think he was worth $20,000. He was like young men generally.

Q. When was that?

A. I don't know how long. I knew him long before he was married. I knew his wife when she was a little child.

Q. The time you are speaking of was long before he was married, was it?

A. Oh, yes.

Q. Have you any idea about how many years ago?

A. I have not; I could not say.

Q. Twenty-five?

A. More than that.

Q. Thirty?

A. About 28 or 29 or 30 years. I could not tell positively.

Q. Mr. Stickney was a very square, honorable man, was he not?

A. I do not think any man was more so, so far as my dealings with him went.

Q. He would not do a wrong or injustice to anybody knowingly, would he?

Objected to by Mr. Selden as calling for the opinion of the
191 witness and under circumstances in which it is apparent from the bill that no intentional wrong or injustice is attributed to the late Mr. Stickney or charged against him.

Q. What sort of a business man was Mr. Stickney?

A. He was a fair business man.

Q. Industrious man?

A. Oh, very industrious.

Q. Was he an enterprising man?

A. Yes, sir.

Q. He had the entire confidence of the business community, had he not?

A. I think so, sir.

Q. Do you know what his income in the later years of his life was from his official position?

A. No, sir; I do not.

Q. Do you know whether or not he was dealing in stocks, bonds, or securities in any way?

A. Not to my knowledge, except some few cases that Mr. Snyder named here—Inland & Seaboard Coasting Co. stock, &c. He was not what you might term a stock broker.

Q. Did he make investments in stocks, bonds, or securities of any character?

192 A. Not to my knowledge, except what have been named here by Mr. Snyder.

Q. He did deal considerably in real estate?

A. Oh, yes; I know he had some Washington & Georgetown

steamship stock, because I had some myself, and have it yet. That is the reason I know it.

Q. When you first spoke to Mr. Stickney about the loan of $10,000 to yourself he said that he didn't just then have the money himself, but that his wife might have it in a few days?

A. No, sir. He said he thought his wife would have it coming in in a few days, but I did not know where it was coming from, whether she had it in her pocket or in bank, or where.

Q. When he made the loan to you of $10,000 did he state to you from whence the money came?

A. He did not, sir.

Q. Have you any idea as to the amount of his annual income in the later years of his life?

A. No, sir; I do not know.

Q. He was a man of simple habits, was he not?

A. Oh, very.

Q. Frugal in his personal expenditures?

193 A. Yes, sir.

Q. How did he live in his household—expensively or frugally?

A. That I cannot tell, but I should judge not expensively, from the character of his wife. She was a splendid wife. I should judge they lived economically.

Q. They had but one child, I believe?

A. So far as my knowledge extends.

Q. When did he die?

A. He died in 1880, and I think he was 28 years old when he died.

Q. Could you form an idea as to about what a gentleman's family expenses would be, living as you supposed Mr. Stickney to have lived?

A. I do not think it cost Mr. Stickney over $3,000 per year to live.

Redirect examination by Mr. SELDEN:

Q. You don't know anything of your personal knowledge of his owning $20,000 when you first knew him?

A. I do not know; that was simply my opinion.

Q. You don't know whether he owned something or nothing, do you?

A. I do not; it is only my opinion.

194 Q. From 1870 to 1881, inclusive, what was money in hand, in sums ra-ging from $5,000 to $25,000, worth in the way of interest income to a man of good business capacity?

A. I do not think you could get more than 8 or 8½ per cent.

Q. And was it on an average worth that?

A. I don't think it would average much more than that. I think it would average about that.

Adjourned to to-morrow at 3 o'clock.

FRIDAY, *Nov.* 3, 1882.

Hearing pursuant to adjournment.
Present: Mr. Henkle, Mr. Selden.

THOMAS J. FISHER sworn.

Examined by Mr. SELDEN:

Q. You reside in the city of Washington, and are engaged in the real estate business?

A. Yes, sir.

Q. You have been for many years familiar with the values of real estate in the city of Washington and personally acquainted
195 with the real estate of which you are about to testify?

A. Yes, sir.

Q. Indicating that property by squares and lots, will you please state what, in your opinion, is its present market value upon the usual terms of sale?

A. I examined that property to-day and made a memorandum of it. I value the property as follows: Sublots 37 & 38, square 182, at $5,500; sublot 72, square 242 (improved by a brick house), at $10,000; sublot 136, square 365 (improved by a three-story brick), at $3,000; sublot 156, square 365 (improved by a two-story brick house), at $2,250; lots 1, 69, 70, 71, 72, and 73, square 448, the homestead property (improved by large brick house and stable), at $18,000; part of lot 1, square 523 (improved by two-story brick house), at $4,000; sublot 45, square 624 (improved by two-story brick house), at $2,800; sublot 41, square 624, at $2,250.00; sublots 21 and 22, square 892, with frame building, at $1,800; part of lot 1, square 373, with two-story frame, at $2,700.

196 Q. These estimates are derived not only from your general knowledge of the value of real estate in the city, but from a particular examination of these several pieces of property with a view of expressing your opinion?

A. Yes, sir.

Q. And you think that expression the best market price that could be obtained for the property upon the usual terms of sale?

A. Yes, sir.

JOSEPH C. G. KENNEDY sworn.

Examined by Mr. SELDEN:

I am acquainted with the values of real estate in this city and am a real estate agent, and in company with the witness who has just preceded me I examined the property of which he has spoken with the view of giving my testimony as to its value in this case, and I agree with that witness in the estimates he has placed upon the several pieces of property of which he has spoken.

For the purpose of expediting this audit it is agreed between the counsel of the respective parties that the testimony of Geo. E.
197 Johnson, one of the appraisers of the personal estate returned in the inventory of the complainant, as administratrix of her

husband, to the orphans' court, shall be considered as already given, and that such testimony would in substance confirm the accuracy of the appraised value of the personal estate mentioned in such inventory.

FRANCIS H. STICKNEY sworn.

Examined by Mr. SELDEN:

Q. You are a brother of the late Mr. William Stickney, of this city, I believe?

A. Yes, sir.

Q. And the sole next of kin and distributees were the defendants in this suit, Mr. John H. Stickney, of Rockville, Conn.; Mr. Thomas G. Stickney, of Bangor, Me., and yourself, the three last-named persons being his brothers?

A. Yes, sir.

Q. At what age did the late Mr. Stickney intermarry with the complainant in this case?

A. I don't remember.

Q. How long after he had left college, if he went there?

198 A. I don't remember that, either.

Q. Do you know how old he was in 1852?

A. My impression is he was 24 years old. I cannot speak positively.

Q. In what business was he engaged at the time of his marriage?

A. I don't recollect. Whether he was in college here or not I don't remember. He was here at the Columbia College, and I think he married while he was here. Whether he married after he left college or not I don't know.

Q. As a student or professor?

A. As a student. I can only remember what he was doing when I came to Washington. I remember that distinctly.

Q. Previous to his marriage had he, to your knowledge, been engaged in any business by which he might have obtained any considerable fortune?

A. I have no recollection as to that. He studied or practiced law in St. Louis, Mo. I don't know whether he made anything out there or not.

Q. How long?

A. I could not tell you anything about it.

199 Q. Had you any reason to suppose, from your acquaintance and relation with him by blood, that he was possessed of any considerable amount of property at the time of his marriage?

A. No, sir; I did not suppose that he was. I did not know.

Q. Did you not then suppose the contrary?

A. I cannot answer that question. I think my brother was a tutor down South, and I don't know how much he made. My impression is that he was a private tutor in some family, and I don t know how much he received or anything about his salary.

Q. You did not, then, yourself know of any property that he possessed, did you?

A. No, sir, I didn't know of any.

Q. Had he, to your knowledge, at the time of his marriage, acquired any property from his father or mother in the way of advancement in life?

A. No, sir; not to my knowledge.

Q. And the only pursuits in which you are aware that he had up to that time been engaged were as a tutor in some private family, and as a practitioner for a brief period at the St. Louis
200 bar?

A. I could not give any opinion about that at all. I don't know of anything else.

Q. After the marriage of your brother, for the next four or five years in what business, to your knowledge, was he engaged?

A. I don't know.

Q. At what time subsequent to his marriage did you first become acquainted with the character of the business in which he was engaged?

A. When I came to Washington—I think that was in 1855—my impression is that he was employed under the Government.

Q. In 1855?

A. I don't know how long he had been there.

Q. In what capacity, if you please?

A. He was in the Treasury Department.

Q. And do you remember at what salary?

A. I do not. I don't remember his salary.

Q. What was the grade of his position there?

A. I think he was disbursing and corresponding clerk.

201 Q. Do you know whether his salary at that time was so much as $1,800?

A. No, sir; I do not. I don't remember.

Q. You don't know whether it was more or less?

A. No, sir.

Q. How long, if you please, did he continue to keep that position?

A. I don't think any longer than 1855. He resigned, I think, some time in 1855.

Q. And what, to your knowledge, was his next occupation or employment?

A. I think he was employed by Mr. Kendall.

Q. In what capacity and at what compensation?

A. I don't know anything about the compensation. He acted as his private secretary.

Q. And how long did he continue in that capacity?

A. I think up to the time of Mr. Kendall's death. I am not sure.

Q. Which was in 1869, I believe?

A. I don't remember.

Q. And from the time of the employment of your brother by Mr. Kendall up to the time of the death of the latter was your brother, to your knowledge, in any other employment than that of secretary for Mr. Kendall?

202 A. I don't know whether he was or not. He may have had other business.

Q. I ask, whether to your knowledge?

A. I could not answer that question. I think very likely he had other business. I will change that. To my knowledge, I don't think he was engaged in other business. He went off on a tour in relation to a suit involving a large sum of money, but I think now it was for Mr. Kendall. I have no knowledge of his being in any other business. My brother was employed and held other offices, but I don't know when they commenced—anything about it; whether it was before Mr. Kendall's death or after. He was employed by the Deaf & Dumb Asylum and received a salary.

Q. Do you know of any employments that your brother had at any time after his marriage except such as were connected with the Columbia College, Safe Deposit Co., National Savings Bank, the Deaf & Dumb Institution, and as Peace Commissioner of the Indian Department of the United States?

A. He held an office under the city government. I don't know whether it was lucrative or not. It was an honorable one.

Q. Well, except as Peace Commissioner, as an officer of the
203 Legislative Assembly, and in connection with the four institutions I have just mentioned, do you know of any other office or business in which your brother was engaged after his marriage?

A. No, sir; I don't know of any.

Q. During his married life your relations with him were those of confidence and intimacy, were they not?

A. Yes, sir.

Q. Though you have not heard it, it has been stated in the progress of this audit about a certain share of the Journal of Commerce stock of New York standing in the name of your brother. Do you know when and from whom he acquired that stock?

A. No, sir; I do not, unless it was from my brother. I don't know how he got it.

Q. Do you know whether he did get it from your brother or not?

A. I do not. I presume he did, but I don't know anything about it.

Q. You are familiar, of course, with the handwriting of your brother?

A. Yes, sir.

Q. I will hand you what purports to be a stub book kept by your brother between the years 1869 and 1871 or some parts of those years, and call your attention to two entries; the first, as
204 of Dec. 19, 1870, as follows: "J. N. S., $5,000," and the other, as of Jan. 10, 1871, as follows: "J. N. Stickney, J. of C. stock, $5,300.00," and ask you in whose handwriting those entries are.

A. I should think it was my brother's handwriting.

Q. Refreshing, if possible, your recollection by those entries, what, if anything, can you now say in respect to the source from which your brother obtained the Journal of Commerce stock?

A. I should think, from this book, that he obtained it from my brother. That is what I should say.

Q. I also call your attention, on the same stub book, on the credit

side of the account kept by your brother, to the two entries following:

	"Balance forward		404 82
"Dec. 18, 1870		50,005.20	5,331 25
			5,736 07
	"Total debits		5,631 87
	"Balance forward		104 20
205	"Balance forward		151 37
	"Jan. 10, 1871, sold $5,000 5.20 for 108		5,400 00
			5,551 37
	"Total debits		5,388 46
	"Balance forward		162 91"

and ask you to say, if you please, in whose handwriting those entries are.

A. I should say they were my brother's.

It is admitted that the stub books shown to the witness are those kept by the late Mr. Stickney himself in his lifetime.

Q. Have you any knowledge as to whether your brother received and used, in his own name, any portion of the distributive share coming to his wife from the estate of the late Mr. Kendall?

A. No, sir; I have no knowledge. I never heard him say anything about his money matters.

Q. And you don't know whether he ever received a dollar of it or not in his personal capacity?

A. I don't know anything about his money matters, as I said before. He may have received a good deal. I presume he did. I don't know anything about it.

Q. Why do you presume he did?

A. From some of his investments.

206 Q. What were the character of the investments which forced from you this presumption?

A. Take the house he lived in—6th and M Sts. That is the only one I know of. I don't know anything about his property outside of that. I don't know where he got all the money that he built that house with; I should think very likely it came from his father-in-law.

Q. You know that he had other property in the city?

A. Yes; I think he had. I don't know how much or anything about it.

Q. What presumption did you draw, if any, in respect to that other property?

A. That might have come from his own means. I don't know anything about it. There was only one transaction that I know about of my brother's business. If you like me to state that I will.

You asked me a little while ago a question, whether my relations with him were confidential and intimate, and I said they were, but never in the whole course of our lives did he ever say to me anything about his money matters, except on one occasion. He told me he got some telegraph stock from Mr. Kendall, and I think he made several thousand dollars on it. I don't know how he got the stock.

I only know that he told me that he received this stock from
207 Mr. Kendall, and I don't know when, without it was when it was sold to the Western Union. Mr. Kendall realized a very large amount, and my brother did, I think. It was several thousand dollars. That was the only time that he ever told me anything in regard to his finances.

Q. Do you wish to be understood as saying that your brother informed you that he purchased this telegraph stock from Mr. Kendall?

A. I did not say he purchased it. I don't remember whether he purchased it or whether it was given to him.

Q. And therefore you don't mean to say that he told you that he purchased it?

A. No, sir.

Q. Did not the proceeds of that telegraph stock go to the erection of the house in which your brother resided?

A. I could not tell you. I know nothing about what he did with his money.

Q. How long before the death of Mr. Kendall was it that your brother received this stock?

A. I have no recollection.

Cross-examination by Mr. HENKLE:

Q. How long have you lived in Washington since you came here—continuously?

208 A. Since 1855.

Q. What sort of a business man was your brother?

A. I think his reputation was that he was a very good business man.

Q. Was he an industrious, enterprising man?

A. I always thought so.

Q. Do you know whether he made any investments in stocks or bonds or anything that was marketable or not before Mr. Kendall's death, in 1869?

A. No, sir; I do not.

Q. Do you know of his buying real estate before Mr. Kendall's death?

A. No, sir; I do not.

Q. I am not speaking of any specific property, but do you know as a general fact that he did buy other real estate—had other real estate—than the homestead prior to Mr. Kendall's death?

A. I don't remember. I don't remember what he had.

Q. And you are not able to say whether he ever engaged in any other business than the service of Mr. Kendall or not prior to Mr. Kendall's death?

A. No, sir; I am not.

Q. Mr. Kendall had very large interests, had he not?

A. Yes, sir; I think he had.

209 Q. And he was quite advanced in age, was he not?

A. Yes, sir.

Q. Did not he depend very much upon Mr. Stickney in the later years of his life?

A. I think he did.

Q. Didn't he employ Mr. Stickney's judgment and enterprise in his own business?

A. I think he did.

Q. Well, don't you know that Mr. Kendall recognized his value and paid him liberally for his services?

A. I remember one case that Mr. Kendall was attorney for, and my brother copied for him, and my impression is that he received a handsome fee in that case. I am under that impression. He was engaged two or three months, I think, taking testimony up and down the Mississippi river, involving a large sum of money.

Q. Is that your recollection that you learned from your brother or not, in any way, so as to enable you to speak of it as a matter of knowledge, that your brother received a handsome fee in the case to which you have referred?

A. I cannot speak with any positive information in regard to it; I only know that it involved a large amount of work. Before entering my office I remember I wrote for my brother one night until three o'clock in the morning, helping him.

210 Q. Do you know that Mr. Kendall received a large fee in the matter?

A. My impression is that he did. I remember the case very well. It was the case of Glover *et al.*, carrying the mails, and when I entered the Treasuary Department I worked on the same case for the Government.

Q. Mr. Kendall was a very liberal man, was he not?

A. I always thought so.

Q. And was fond of your brother?

A. That is my impression.

Q. Did you derive from your brother the understanding that Mr. Kendall had rewarded him very liberally for his services rendered to him?

A. I cannot say that I ever had any information from my brother to that effect, but that was my impression.

Q. Do you know whether your brother dealt in that telegraph stock in the lifetime of Mr. Kendall as his own property?

A. I think he did.

Q. Do you know to what extent he dealt in that stock before the death of Mr. Kendall?

A. No, sir; I do not.

Q. Don't you know as a matter of fact that your brother was a man of considerable property at the time Mr. Kendall died in his own right?

211 A. I don't know. I don't know what he had in his own

right. I supposed that he had property, but I don't know anything as to the amount or value of it.

Q. Was it not your understanding, from your relations to your brother and the knowledge of his affairs and the way he lived, that he was in quite comfortable circumstances at the date of Mr. Kendall's death? I mean your understanding from your knowledge of your brother's mode of living, &c.

Mr. Selden objects to the question as seeking to elicit from the witness an inference of his own, which he is not entitled to express.

A. I could not give any information on that point, from the fact that I did not know, as I have stated before, very much about my brother's affairs. I am satisfied that he invested where he had an opportunity to do so to good advantage. I think he owned stock in a Rockville, Conn., bank that paid him very well.

Q. Do you know when he acquired that stock?

A. No, sir.

Q. Do you know how much it was?

A. I would like to make a remark in connection with that
212 which, perhaps, will explain that. My brothers whenever they saw an opportunity for one of us to make anything, they gave us the advantage of it, and I will state one instance: My brother in Bangor was secretary of a steamboat company, and they chartered a steamboat to the Government at a very high rate of pay. I know my brother there told me by putting in $100 or $200 that I could realize a large sum, which I did. I will not say whether William put anything in or not. I put in $150 or $200 and realized $400 or $500. In connection with that remark, I think, my brother in Rockville, when he knew that this bank was getting under way or was under way, told my brother William that it would be a good investment to buy some of that stock, and I think he did, and I have no doubt realized 12 per cent. or more per annum. I don't remember whether William told me that or my brother John. I don't know anything about the amount. I don't know whether he owns it now or whether he sold it, but I think such was the fact.

Q. Were you here when your brother died?

A. Yes, sir.

Q. How long was he ill?

A. I think he was taken Saturday night and died Thursday morning.

Q. Was his attack quite acute?

A. I should infer so from the short illness.

213 Q. Do you know what the condition of his mind was during his illness?

A. I thought it was clear, and I saw him twice a day, I think, up to Wednesday.

Q. Did he say anything about making any disposition of his property in his last illness in your hearing?

A. No, sir; not to my knowledge.

Q. Did you ever hear him say anything about making a will?

A. No, sir; I never did.

Redirect examination by Mr. SELDEN:

Q. How long before the death of your brother had you reason to suspect that his dissolution was near at hand?

A. I called Wednesday evening and he was asleep, and I did not see him. I thought he was comfortable, and had no idea he was so seriously ill. On Thursday morning about five o'clock I was sent for.

Q. At what time on Wednesday night were you there?

A. I think it was about seven o'clock.

Q. Had you seen him previously on Wednesday?

214 A. I think I saw him Wednesday morning. I made it a point to call there twice a day.

Q. At the time of your interview with him on Wednesday morning, as far as your observation and intercourse with him extended, did he manifest any anxiety as to his situation or any apprehension as to his approaching end?

A. No, sir; I think not.

Q. Did he not evince, as far as you saw, every confidence in his early restoration to business?

A. He was very quiet and did not say much. I don't think he realized that he was seriously ill.

Q. And the blow came upon his family very suddenly—very unexpectedly?

A. Yes, sir.

Q. So far as you observed, what expectation, until within a few hours of the dissolution of your brother, had his friends and family entertained in respect to the issue of his illness?

A. I presume they had the same opinion I did—that he was not seriously ill. I don't know. I think the change occurred in the night some time.

Adjourned to Saturday, Nov. 4, at 7.30 o'clock p. m.

SATURDAY, *Nov.* 4, 1882.

Hearing pursuant to adjournment.

Present: Gen. Henkle; Mr. Selden.

215 The auditor exhibits a letter from B. P. Snyder, a witness heretofore examined in this proceeding, desiring to correct the testimony given by him as to the valuation of the property known as No. 307 M St. N. W., being part of lot 1, in square 523, making his valuation thereof $4,000 instead of the sum heretofore named by him.

By agreement the said letter is admitted as a correction of the testimony of the said witness, and is marked Complainant's Exhibit No. 8.

The counsel for complainant presents a certificate of W. W. Johnston, M. D., dated Nov. 4, 1882, which is admitted by the counsel for the defendant as evidence of the facts therein stated. Said certificate is marked Complainant's Exhibit No. 9.

Counsel for the complainant also presents a letter from Frank H. Stickney, a witness heretofore examined in this proceeding, dated

Nov. 4. 1882, and addressed to the complainant, which letter is admitted by the counsel for the defendants as evidence of the fact therein stated. Said letter is marked Complainant's Exhibit No. 10.

AUSTIN P. BROWN sworn.

Examined by Mr. SELDEN:

I have resided in Washington since 1860; am engaged in the business of army and navy supplies. I knew the late Wil-
216 liam Stickney quite well. I began to have business relations with him about six or seven years ago, and had such relations continuously for two or three years. Then an interval of perhaps a year and a half elapsed, when such relations were resumed and continued up to his death. Our business transactions involved quite large amounts of money, aggregating from $150,000 to $200,000 altogether. I base that calculation upon the advances I received from him. I sometimes used the same money over again after payment of the loan. Many transactions represented the turning over of the same money. He frequently represented to me that the money belonged to his wife, and impressed on me the necessity of having the security all right. He told me this at least three or four times. He simply told me it was his wife's money and he wanted to be careful about the security. I have not repaid all the money I got under these statements. The money I owe, about $2,300, is part of a loan obtained with the statement that it was his wife's money. That loan was $13,000.

(The stub book of the late William Stickney, used in this reference, under date of M'ch 29, 1875, is shown to the witness, who says:) "I saw nearly all of these entries at the time they were made. They were shown me by Mr. Stickney."

217 (The entries under date of July 6, 1875, are shown to the witness, who says:) "I have no doubt these entries are correct, but I had so many transactions with him that I cannot recollect any specifically. I frequently went over his account and compared it with mine during the whole period of our transactions. I identify these stub books as the ones I went over with him."

Cross-examination by General HENKLE:

I have seen both of these books. I identify them by the writing of Mr. Stickney. I could not swear to their being the identical books, but they look very much like them. The transaction of May 13, 1880, I paid commission on. Mr. Stickney drew the money and handed it to me. He drew it on a check payable to himself.

The following entry is shown to witness:

"May 13, 1880. Self, loan to Austin P. Brown ---------- $3,000"
"(Com. paid.)"

and he states: "I remember this transaction by the endorsement of "commission paid." I could not say that I remember
218 any individual transaction. I believe I had that transaction; that the money was loaned to me by Mr. Stickney. That is a part of the money he told me was his wife's. I think all the

money I got after that he told me was Mrs. Stickney's money—all from about that date. I think also all the money from Dec. 31, 1879, he said was his wife's.

Witness is shown the following entry:

"1879.
"Dec. 31. A. P. Brown (in pencil:) for wh. I am to receive-- $6,500
"$150."

and he states: That was $6,500 loaned to me on a power of attorney to collect that amount from the Government. Mr. Stickney told me that was Mrs. Stickney's money. I had several transactions with him after that time, increasing the amount to $12,000 or $13,000. He collected that money from the Government.

The following entries are shown to the witness:

"1880.
"Jan'y 13. Rec'd from Austin Brown, on ac. of
219 loan of $6,500---------- $1,500
"14. Rec'd from Austin Brown, on above
ac.---------- 379 68"

And—

"1880.
"Jan'y 15. Austin P. Brown ---------- $1,800
"For wh. I am to receive $45.00."

and he states: This was the same money loaned over again.

"1880.
"Jan'y. Rec'd from A. P. Brown---------- $1,452"

Witness says: That was a collection on account of some loan, either the $6,500 or the $1,800.

"1880.
"Jan'y 31. A. P. Brown ---------- $1,400
"For wh. he agrees to pay $45.00."

Witness states: That was a renewal of the $1,400, just paid.

"1880. Rec'd from Austin P. Brown ---------- $1,500
"Feb'y 10. A. P. Brown, cash ---------- $653 47"

220 Witness says: The $1,500 was a payment of a part of a loan, probably on account of the $6,500. I cannot say certainly as to the $653.47, whether it was a payment or loan. I think it was a payment.

"1880.
"Feb. 10. A. P. Brown---------- $2,000
"For wh. he agrees to pay $60."

Witness says: This loan was the above amount borrowed again.

"1880.
"Feb. 25. A. P. Brown---------- $3,239 24"

Witness states: That was money paid by me on account of an old loan.

"1880.

"Feb. 26. A. P. Brown $3,000

"For wh. Austin agrees to pay $150 in add'n to the $300 order on B. P. S."

Witness says: That was the money above loaned to me again.

"1880.

"March 10. Cash from A. P. Brown ..... $1,700"

Witness states: This was a payment on account of one of the loans.

221 "Commissions all paid to, but not including, Feb'y 26, 1880.

"A. P. B. Dr. (prin.)	$14,700	
"Mar. 10. Dr.	1,700	
		16,400
"Cr.		
"By 10,124.39	10,124	39
		6,275 61
"Add com. Feb. 26 & Mar. 10	235	
		6,510 61"

(This entry in pencil:)

"Mar. 10, '80. Jan. note, A. P. B., for $3,500, 90 days, com. included, in order of this date."

Witness states: That was a summing up of the account showing what I owed him at that date.

"1880.

"April 5. A. P. Brown ..... $4,000"

Witness says: The loan of $6,500 had been received as above. This was a part of the above $10,124.39 payment reborrowed.

"Apr. 15. A. P. Brown	$4,000	
" " "	235	
		4,235"

222 Witness says: That was payment of the $4,000; that was a collection made by Mr. Stickney.

"A. P. Brown, Dr.

	6,510	61
"April 15	4,000	
	10,510	61
"Cr. by pay't as above, Ap'l 15	4,235	00
"Add com. on $4,000 loan, Ap'l 5	200	00
"Total	$6,475	61"

Entry under date of May 3rd shows the total indebtedness of A. P. Brown to be $10,150.61, and loan of the same day included in it.

May 13, 1880, shows a balance against A. P. B.	$8,262	11
May 13, 1880, loan to A. P. Brown, $3,000, included in above balance.		
June 22, additional loan	1,300	00
" " note at three months	3,000	00
	12,562	11
July 20, 1880, by payment	5,483	61
	7,078	50
July 20, 1880, loan	5,000	00
	12,078	50

223 Witness continues: The most money I have had at one time was $20,000. I began to borrow money from Mr. Stickney about 6 or 7 years ago, generally on accounts against the Government, sometimes on bonds, but mostly on accounts against the Government, which he collected and loaned me the money again. I had about $15,000 from him on the Inland and Seaboard Coasting Co. bonds. I don't think he always told me the money was his wife's. I remember particularly his saying so in the last transaction. He had said so before.

Redirect examination.

I have only referred to such entries in the stub book as my attention has been called to by counsel for the defendants.

Mr. STICKNEY recalled.

Examined by Mr. SELDEN:

Q. Did you ever derive any pecuniary consideration from the telegraph stock?
A. No, sir.
Q. You never sold it?
A. No, sir.
Q. Did you ever give it to any one?
224 A. No, sir.
Q. When did your husband die?

A. Oct. 13, 1881.

Q. Of what duration was his illness?

A. Four days.

Q. What apprehension did he entertain during his illness as to his condition, and what apprehension was entertained by his friends?

Objected to by General Henkle as incompetent.

A. He had no apprehension himself, for he stated the day before his death that he expected to be up the next day; and I had no apprehensions.

Answer objected to by General Henkle.

Q. What was his action, if any, or his condition as to business affairs the day before his death?

A. He transacted a good deal of business the day before his death. He signed a number of papers and had money transactions with the bank.

Q. And how late was it in the progress of the disease that any change occurred?

Objected to by General Henkle.

A. Only a few hours before his death.

225 Q. Something has been said with reference to your having the keys of the safe of your husband? How did you come into their possession?

A. After the physicians said that he must die I was alone with him and asked him if he had any advice to give me. He said: "This has come upon me so suddenly that I have not time to think." He asked where his keys were. I told him I supposed in his pants' pocket. He told me to take them and examine his papers myself and not let the keys go out of my possession. His brothers were at our house and were to leave on the next day, and I thought I had better look at the papers before they left.

Q. You may state under what circumstances after the death of your husband you discovered that such property as you had was standing in his own name.

A. It was the day after the funeral. I went to the bank. I supposed all my property was standing in my own name, and I then discovered that not any of it was in my name.

Q. At the time you made this examination where were the evidences of value of your husband and who was present?

A. They were in the Safe Deposit Company. I was accompanied by Mr. Snyder. The box was taken into a little room and examined by us. I had sent for Mr. Selden and he came in.

226 Q. Before you went to the bank on that occasion how did you suppose that the share which you had derived from your father under his will was held?

A. I supposed my husband had made investments in my name, as I had requested him to do always when money was received.

Q. From the death of your father up to the death of your hus-

band what portion of your distributive share under your father's will have you actually received or enjoyed?

A. None at all; $1,000 was given to the boy.

Q. State, if you please, what disposition, if any, by gift or sale or transfer for value, you have made of any portion of your distributive share under the will of your father.

A. The $1,000 to my son; that was all.

Q. With the exception of such money or property as you have acquired or may acquire out of the estate left by your husband, what property have you?

A. None.

By consent the further deposition of this witness is taken in narrative form.

As to the Glover case, I do not think my father had any-
227 thing to do with it. My husband was employed by Captain Glover at $6 per day and expenses while he was employed. My husband had a small amount of stock in the Rockville Bank, but disposed of it. My son's name was William S. Stickney. We called him Will.; sometimes Willie.

A letter is here shown to witness, dated Dec. 23, 1879, and she states:

This is my handwriting. I wrote it Dec. 23, 1879. I next saw it after my husband's death, in his desk drawer. I had not seen it between those times.

The letter is offered in evidence and marked Complainant's Exhibit No. 11.

This letter is objected to as evidence by counsel for defendants.

Witness continues: All the contents of the box were returned in the inventory, except a package marked by my husband as worthless. I looked at them and thought them so myself. I have re-
turned all the personal property I know of. The indebted-
228 ness of my husband is about $22,000. I have paid $11,180.34. There remains on the Vermont-avenue house $6,300; note to Stickney, about $2,650, and note at National Metropolitan Bank (Brown), $2,300.

Cross-examination by General HENKLE:

I sent the letter of Dec. 23, 1879, by my man servant to my husband at the bank. I don't remember having any conversation with him about it after he brought the check the next day. We had had a conversation about it previously, and Mr. Stickney demurred to giving me that amount; so I wrote the note to emphasize that and to emphasize the latter part of the note. My husband was an invalid, and I desired, in case anything happened to him, to have something of my own to fall back upon. I was not then aware that my money had not been invested in my name. I had no suspicion that he had not obeyed my requests. At the times I had made them he would sometimes smile and say that it would be all right.

I do not remember asking him if he had made the investments in my name. I found this letter in his desk at home. The desk was not locked. He did not lock his drawers. I remember Mr.
229 Stickney going to Europe twice—first in 1856 and next in 1866 and 1867. I went with him the last time. We sailed from New York. I saw his brother there at that time. I think they were all there, and his father. Mr. Stickney had not a large amount of money with him, unless it was father's money. Father was in the party. He didn't have $75,000 or $100,000 with him. I did not ask my husband whether he had invested the money in my name, because I had confidence in him. The morning of the day I wrote the letter he brought the executors' receipt to me, and I said in a laughing way, "I want this invested in my name." I thought perhaps he did not understand it, so I added it to the note. My father furnished the money for the European trip.

C. CUTTER sworn.

Examined by Mr. SELDEN:

I married a daughter of Mr. Amos Kendall—Mrs. Babcock. The executors handed her distributive share of the receipts to me. I would obtain her receipts and hand them over to the executors. I invested the money, sometimes in my name and sometimes in hers; at first generally in her name, latterly in mine. Mrs. Stick-
230 ney at the death of her husband had no money, because she requested me to loan her money to pay some expenses with.

Objected to by General Henkle (last sentence).

I have know- her since 1865. I have never known her to have any special experience in business affairs. I should say she was capable to transact business; cannot say about her experience. I do not know of any special business transactions of hers. I have never known her to conduct business on her own account; her husband generally did it. After her father's death she had no business experience that I know of. In conversation with Mrs. Stickney and in assisting her to settle matters I have endeavored to ascertain the indebtedness of Mr. Stickney. It amounts to between $22,000 and $23,000. I know something of the value of the personal estate. Some of the articles named in the inventory are not worth as much as the appraisement. The amount of the appraisement is all the property is worth. I am familiar with the real estate described in these proceedings. I have had ten years' experience in dealing in real estate in Washington. The aggregate value of the real estate at present market rates and upon the usual terms of
231 sale would be $52,000, including the homestead at a valuation of from $18,000 to $20,000.

Q. You may state, if you please, any intercourse that you have had with the adult defendants with reference to this litigation.

Objected to by counsel for defendants.

A. I saw both of the adult defendants some time about the last of Jan'y, 1882, and submitted to them a proposition which Mrs.

Stickney had given me for the purpose of effecting a settlement of their interests as heirs-at-law and next of kin, and, in accordance with her desire, I submitted to them the proposition recited in the twentieth paragraph of the bill, which they declined. I knew Mr. Stickney first in 1865. I do not know what his means were: cannot say whether he was or not reputed as a man of wealth. I know he was living with Mr. Kendall, as I understood, as his secretary.

Cross-examination by General HENKLE:

I suppose Mr. Kendall was a liberal man. Mr. Stickney was his man of business, in part, and very much trusted by him. Mr.
232 Kendall was quite fond of Mr. Stickney. I have since ascertained that before Mr. Kendall's death Mr. Stickney was assessed with some property, but not $47,000 worth or anything like that. The only property was that at 6th & M Sts. and on H St. I was married after Mr. Kendall's death, in 1871. I know of Mr. Stickney starting an envelope factory here between 1864 and 1866. He sold out after having it about 6 months. I do not think it ever paid a dividend. My estimate of Mr. Stickney's debts includes the $6,000 on the Vermont-avenue property. I do not know whether Mrs. Stickney did any business herself.

233 *Defendants' Exceptions to Auditor's Report. Filed May* 23, 1883.

In the Supreme Court of the District of Columbia.

JEANNIE K. STICKNEY
vs.
EDWARD M. STICKNEY *et al.* } No. 8087, Equity Docket 22.

The defendants except to the report of the auditor filed in this cause on the 24th day of April, 1883, and for grounds of exception show the following:

1st. The auditor says that "the proceeds of the estate (that of the father of the plaintiff) coming into the hands of these executors was from time to time divided, and upon the receipt of the complainant to them her share was currently delivered to her husband, who, as the proof here shows, used to invest the same in his own name without the knowledge of the complainant and in contravention of such express directions as she is shown to have given in the premises."

There is no testimony in the case showing or tending to show that Mr. Stickney, deceased, made investments of the money
234 coming into his hands from the estate of the father of plaintiff in his own name "without the knowledge of the plaintiff and in contravention of such express directions as she is shown to have given in the premises."

No witness testifies to this or anything like this, save the plaintiff herself, who is clearly incompetent to testify to it and to whose testimony the defendants objected at the time.

This important conclusion of facts is therefore not based upon the evidence, and is against the presumption that the investment of the

wife's money by the husband, whether in his own name or hers, was with her knowledge and approval.

2d. It is said at the top of the 2d page of the report: "In Schedule A I have stated the account of such moneys as are shown to have come to the possession of the said William Stickney and not delivered to the complainant."

235 The auditor then proceeds to state substantially that the proofs trace the items enumerated in the first page of Schedule A into the bank account of the said William Stickney or into his use or appropriation of it.

He also says substantially that there was also produced bank books and check books of the said William Stickney showing in most instances the specific use made by him of the money so being the share of the complainant derived from her said father's estate.

The bank books of Mr. Stickney do show deposits in his own name, sometimes contemporaneous with receipts of money belonging to his wife from her father's estate, and corresponding in amounts, and sometimes near about the same time, from which it might fairly be presumed that it was the same money; but neither the bank book nor any other evidence in the case shows that these deposits were not made with the knowledge and approval of the plain-

236 tiff, or that he did not fully account to her therefor, save her own testimony, which is incompetent.

3d. Again, the auditor says on page 2d: "It will be seen upon examination of the evidence taken in this reference that there is no warrant for the presumption that the complainant assented to or acquiesced in the use or investment of her property by her husband, or that he undertook to reduce it to possession and treat it as his own; on the contrary, the proof shows that she intended to retain the apparent as well as the real ownership, the nominal title as well as the equitable right, and that he considered himself as her trustee and proclaimed himself as such."

There is not a word of proof showing or tending to show that the plaintiff ever objected to any investment made by her husband, and in the absence of proof the presumption is that she did assent to and acquiesce in it; and so far as he is shown to have invested her money in his own name the presumption is that it was with her knowledge and approval.

237 There is no evidence that she ever directed her money or any of it to be invested in her own name, save in a single instance, when the witness, Mrs. Jones, on page 21st, says she heard Mrs. Stickney say to Mr. Stickney, "Now, Will., I want you to invest this money in my name," referring to the proceeds of the Chicago property.

The fair presumption from this evidence is that she knew the other money had not been invested in her name.

4th. The auditor's conclusion that the use of the wife's money by the husband (so far as the evidence shows it to be so used) was without her knowledge or acquiescence is not justified by the evidence, and the presumption is precisely the reverse.

5th. There is no pretense that there was any promise on the part

of Mrs. Stickney to pay back to the plaintiff the money of her father's estate which came into his hands, and hence the conclusion of the auditor that she was creditor to the estate of her husband on this account is erroneous.

6th. There is no evidence that the deceased had not while living fully accounted to the plaintiff for all of her money which ever came into his hands.

7th. The auditor's conclusion that the plaintiff did not know of and acquiesce in the investments of her money by her husband is based solely upon her own testimony, which is incompetent. There is no other proof.

For these and other errors of law and fact apparent on the face of the auditor's report the defendants pray that it may be set aside.

E. C. WEAVER,
S. S. HENKLE,
Solicitor- for Defendants.

238 *Decree for Sale. Filed Oct.* 12, 1883.

In the Supreme Court of the District of Columbia, the 12th Day of October, 1883. In Equity.

JEANNIE K. STICKNEY
vs.
EDWARD M. STICKNEY *et als.* } No. 8087.

This cause came on to be heard upon the exceptions of the defendants to the report of the auditor and upon the record at large, and was argued on each side by counsel; and thereupon it is, this the 12th day of October, 1883, by the court ordered, adjudged, and decreed as follows:

That the said exceptions be and they are severally overruled, with costs, and that the report of the auditor be, and it is hereby, in all things finally ratified and confirmed.

That William Stickney, her husband, was justly indebted unto the complainant at the time of his death in the sum of seventy-eight thousand three hundred and seventy-one dollars and thirteen cents ($78,371.13), and that no portion of the said indebtedness has been paid or satisfied unto the complainant.

That the complainant, as administratrix of the personal estate of her deceased husband, is entitled in the regular course of her administration to devote to the reduction of the said indebtedness as against the defendants to this cause and each of them the
239 undistributed balance of the personal estate of her intestate now in her hands and ascertained by the report of the auditor, to wit, the sum of thirty-two thousand two hundred and two dollars and eight cents ($32,202.08).

That the complainant be, and she is hereby, empowered to withdraw from the registry of the court, upon satisfying to the clerk his lawful and customary commission or allowance in the premises, the fund of twenty-six hundred and fifty dollars and twenty-six cents ($2,650.26) heretofore by her paid into such registry under and

in pursuance of the order passed in this cause on the 23d day of February, 1883.

That the real estate left by the said William Stickney at the time of his death and in the original bill and the report of the auditor set forth, or so much thereof as may be necessary in the premises, be sold for the payment of the commutation of dower of the complainant in the real estate so sold and of the costs and expenses of this suit and of the balance of said indebtedness hereinbefore decreed to be due unto the complainant after the application to said indebtedness of the said undistributed balance of the personal estate of the said William Stickney, deceased, as hereinbefore authorised.

That Thomas R. Jones, of the city of Washington, in the District of Columbia, be, and he is hereby, appointed trustee to make
240 sale and conveyance of the said real estate, or so much thereof as may be necessary in the premises as aforesaid, and such sale and conveyance shall be free and clear from all dower and claim of dower on the part of the complainant.

That before entering upon the discharge of his duties as such trustee the said Thomas R. Jones shall file in the clerk's office of this court a bond in the penal sum of twenty-five thousand dollars ($25,000), with surety or sureties, to be approved by the court or by one of the justices thereof, conditioned for the faithful performance of his duties as such trustee.

That before making any sale of the said real estate the said trustee, by public advertisement inserted for not less than ten days in some newspaper or newspapers published at the said city of Washington, shall give notice of the time or times and place or places of sale and of the terms thereof, which last shall be as follows: One-fourth of the purchase-money in cash and the residue in three equal installments, payable, respectively, with interest, at six, twelve, and eighteen months from the day of sale, for which shall be passed the promissory notes of the purchaser or purchasers, secured by deed or deeds of trust upon the property, or all cash, at the option of the purchaser or purchasers.

That upon any such sale or sales the said trustee shall return into court a true account thereof, under oath, and upon the final confirmation of any such sale or sales the said trustee, after
241 deducting all necessary costs, charges, and expenses attending the sale or sales, together with such his commissions as are fixed by the usual practice and allowance by this court, shall bring into court the residue of the purchase-money, whether in cash or in notes, for further order and direction thereon, and that the costs of this suit be paid out of the proceeds of the sale of the real estate aforesaid.

CHAS. P. JAMES, *Justice.*

Appeal to Gen. Term. Filed Oct. 15, 1883.

In the Supreme Court of the District of Columbia.

JEANNIE K. STICKNEY
vs.
EDWARD M. STICKNEY *et al.* } 8087, Equity Docket 22.

The clerk will please note an appeal in this cause from the decree of the court in special term passed October 12th, 1883.

Oct. 15, 1883.

HENKLE & DUHAMEL.
Att'ys for Def'ts.

Appeal as ordered entered by the clerk Oct. 15, 1883.

242 *Decree in Gen. Term Affirming Decree of Special Term and Appeal to S. C. U. S. Filed April* 10, 1884.

In the Supreme Court of the District of Columbia, in General Term.
In Equity.

JEANNIE K. STICKNEY
vs.
EDWARD M. STICKNEY *et als.* } No. 8087.

This cause came on to be heard in the general term upon the appeal taken by the defendants from the decree passed by the special term on the 12th day of October, 1883, and was submitted by counsel.

And, it being suggested at the bar by the defendants' counsel that the wife of Edward M. Stickney should be made party, the objection was and is overruled, the court being of opinion that she has no contingent dower interest, except subject to the claim of the complainant as creditor, in the real estate mentioned in the bill.

And it is, this tenth day of April, 1884, ordered, adjudged, and decreed that the said decree of the said special term be, and it is hereby, in all things affirmed with costs.

And from such decree of affirmance the defendants in open court pray an appeal to the Supreme Court of the United States, which is allowed.

By the court:

D. K. CARTTER,
Chief Justice.

243 In the Supreme Court of the District of Columbia. In General Term.

THURSDAY, *February* 24, 1886.

Session resumed pursuant to adjournment.
Present: Chief Justice Cartter and Justices James and Merrick.

JEANNIE K. STICKNEY
vs.
EDWARD M. STICKNEY *et al.* } 8087, Eq. Doc. 22.

Now, on this 25th day of February, 1886, come the defendants, Edward M. Stickney, William H. Stickney, George Stickney, and Carrie Stickney, the said George Stickney by his guardian *ad litem*, Olney G. Gibbs, and the said Carrie Stickney by her guardian *ad litem*, Robert T. T. Spencer, and pray an appeal from the final decree of this court in this cause entered on the 10th day of April, 1884, to the Supreme Court of the United States; which appeal is allowed, and the appeal bond is fixed at $500.

244 DISTRICT OF COLUMBIA, *To wit:*

To Jeannie K. Stickney:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the supreme court of the District of Columbia, wherein Edward M. Stickney, William H. Stickney, George Stickney, and Carrie Stickney, the said George Stickney by his guardian *ad litem*, Olney G. Gibbs, and the said Carrie Stickney by her guardian *ad litem*, Robert T. T. Spencer, are complainants and you are defendant, to show cause, if any there be, why the decree in said cause mentioned should not be corrected so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the supreme court of the District of Columbia.

D. K. CARTTER, *Ch'f Just.*

Served the above order or citation on John Selden, attorney, &c., for Jeannie K. Stickney, by delivering a copy thereof to him in person March 4th, 1886.

A. A. WILSON, *Marshal.*

245 *Appeal* —. *Filed Mar.* 2, 1886. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 27th Day of February, 1886.

JENNIE K. STICKNEY
vs.
EDWARD M. STICKNEY *et al.* } No. 8087.

Know all men by these presents that we, Edward M. Stickney,

William H. Stickney; Olney G. Gibbs, guardian *ad litem* for George Stickney, and Robert T. T. Spencer, guardian *ad litem* for Carrie Stickney, and William W. Kirby, are bound unto the above-named Jennie K. Stickney in the sum of five hundred dollars, to be paid to the said Jennie K. Stickney, her executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 27th day of February, 1886.

Whereas the above-named Edward M. Stickney, William H. Stickney; Olney G. Gibbs, guardian *ad litem* for George Stickney, & Robert T. T. Spencer, guardian *ad litem* for Carrie Stickney, have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Edward M. Stickney, William H. Stickney; Olney G. Gibbs, guardian *ad litem* for George Stickney, and Robert T. T. Spencer, guardian *ad litem* for Carrie Stickney, shall prosecute *his* said appeal to effect and answer all damages and costs if *he* shall fail to make good *his* plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

W. W. KIRBY. [SEAL.]

Sealed and delivered in presence of—
S. S. HENKLE.

Approved:
W. S. COX, *J.*

246 *Clerk's Certificate.*

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in the cause of—

JEANNIE K. STICKNEY
vs.
EDWARD M. STICKNEY *et al.*
} 8087, Equity Docket 22.

Witness my hand and the seal of said court this 18th day of March, 1886.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 243. Edward M. Stickney, William H. Stickney, George Stickney, & Carrie Stickney; George Stickney by his guardian *ad litem*, Olney G. Gibbs, and Carrie Stickney by her guardian *ad litem*, Robert T. Spencer, appellants, *vs.* Jeannie K. Stickney. Filed April 2, 1886.

14—243

247 *Stipulation between Counsel.*

In the Supreme Court of the United States. October Term, 1888.

EDWARD M. STICKNEY, &c., Appellants,
vs.
JEANNIE K. STICKNEY, Appellee. } No. 243.

Certain exhibits which were filed by the complainant below, in the course of the proceedings there had in this cause before the auditor (Rec., pp. 54 *et seq.*), and which constituted and constitute part of the record of this case in the court below, and were thereunto returned by the auditor and therein filed by the clerk on April 24th, 1883, having been omitted from the transcript of the record filed in this court on April 2d, 1886, on the present appeal, it is this 9th day of January, 1889, hereby stipulated and agreed by and between the counsel of the appellants and the counsel of the appellee that the following and the following contents of the said exhibits be, and they are hereby, added to and made part of the said transcript of the record filed in this Court.

In Complainant's Exhibit No. 1 (Rec., p. 54) the statement discloses that on November 12th, 1869, $120,000 in U. S. registered bonds, issued under act of March 3d, 1865, stood to the credit of Amos Kendall on the books of the office of the Register of the
248 Treasury; that upon assignment of bonds in name of Amos Kendall $20,000 in U. S. registered bonds issued under said act were on November 23d, 1869, issued in the name of Mrs. Jeannie Stickney; that in U. S. registered bonds, under the same act, there were issued to William Stickney $6,300 upon assignment of bonds in the name of Amos Kendall, under date of January 18th, 1870, and $20,000 upon transfers of bonds in the name of Mrs. Jeannie Stickney under date of January 31st, 1870.

And that all of the $26,300 in such registered bonds thus issued to William Stickney were disposed of to other persons than his wife.

Complainant's Exhibit No. 2 (Rec., p. 62, f. 146) is a duly certified and authenticated copy of the letters testamentary, granted on the 20th day of November, 1869, by the orphans' court of the District of Columbia, unto William Stickney and Robert C. Fox, as executors of Amos Kendall, deceased.

Complainant's Exhibit No. 3 (Rec., p. 63, top) consists of authenticated copies, certified under the hand of the register of wills for the District of Columbia and the seal of the supreme court of the said District, of the accounts of William Stickney and Robert C. Fox, executors of Amos Kendall, deceased, as presented by said executors to, and, after examination, approved and passed by the said court between the 27th day of January, 1871, and the 10th day of January, 1880. The last in the series of said accounts, being that approved and passed on January 9th, 1880, is verified as to its justness and correctness by the oath of the said Robert C. Fox. Each of the other of said accounts is so verified by the oath of the
249 said William Stickney. Said accounts show, amongst other things—

1. That the said executors therein charged themselves with the following items, amongst others:

Note of Mrs. M. A. Greene, in full			*$20,960 00
" " Fannie Fox, "			10,000 00
Received from Mrs. W. Stickney, am't due said estate			16,037 57
* * * * * *			*
Jan'y 18th. Sundries			6 92
July 6, 7th. Note of J. McCalla	$57 77		
Aug. 2, 8th. Note of J. McCalla	57 77		
			115 54
Dec. 28th. Rent to Dec. 15, from Mrs Clarke			40 00
1872.			
Jan'y 2d. 6 mos. int. on $70,000 (notes of E. M. Gallaudet), at 6 per cent.			2,100 00
* * * * * *			*
July 1. Int., 6 mos., on notes of E. M. Gallaudet, $70,000			2,100 00
" " Cash payment of notes of E. M. Gallaudet (in full)			70,000 00
" " Proceeds of sale of lot 14, sq. 200, for $30,000, 1st payment			5,000 00
* * * * * *			*
Oct. 21. Balance of purchase-money f'r sale, lot 4, sq. 200			25,000 00
" " Int. on same from July 1st to Oct. 10th, 1872			416 66
Nov. 1. Rent from Gen'l Hintzleman for Oct., '72			125 00
" " 6 mos. int. on note of T. B. Bryan for $52,000, dated Apr. 1, '72, at 5 per cent.			1,300 00
Dec. 16th. 250 Cash on judgment, in New York, against T. O. J. Smith			5,254 42
1873.			
May 2d. 6 mos. int. on Bryan's note			1,300 00
Cash from J. M. Marshall, dividend from Fire Ins. Co.			15 75
Nov. 1st. 6 mos. int. on Bryan's note			1,300 00
1874.			
Jan. 6th. U. H. Hutchins' note, $500; int., $147.66			647 66
1873.			
Feb. 5th. Proceeds of sale of house 1223 14th St. N. W. to E. C. Cutter, for cash, the same having been taken in part payment for the sale of the Chicago property to Thos. B. Bryan (no commissions having been charged by the executors)			16,000 00

*The said accounts, on the credit side thereof, contain, among other entries, the following:

1870.	
Feb. 19. By paid Mary A. Kendall (now Greene) own note	$20,960 00
1870.	
Jan. 17. By paid Mrs. Fannie K. Fox, own note surrendered	10,000 00

1874.			
Feb.	5th.	Proceeds of sale of 3 bbls. wine to Gov. Asylum for Insane	184 50
April	15th.	To semi-annual interest from Thos. B. Bryan	2,000 00
July	3d.	To proceeds of J. G. Naylor's note, $500; int., 162.75	662 75
Apr.	15th.	Add'l am't of semi-annual interest from T. B. Bryan, on Chicago property, under new arrangement, from Nov., 1873, to May 5, 1874, less 10 per cent. discount for 10 days	28 42
No-.	5th.	Int. from Messrs. Chase & Root	761 20
"	11.	" " J. G. & H. W. Brown	1,250 00
1875.			
Jan.	5th..	U. H. Hutchins' note, $500; int. to Jan. 1, 1875, 177.50	677 50
May	13th.	Int. from Mr. Chase	380 60
"	21.	" " " Root	380 60
June	7th.	" " " J. C. & H. W. Brown	1,260 41
Nov.	5th.	With cash from Chase & Root (int.)	761 20
1876.			
Apr.	22d.	With cash from Lord, Day & Lord, N. Y., being proceeds of funds received from F. O. J. Smith belonging to this est.	463 40
May	10th.	251 Interest from Chase $380 60	
"	"	" " Root 380 60	
			761 20
June	30th.	With rents from Chicago property from March 15 to date, as per statement of Reese, Pierce & Co.	*738 33
Dec.	19th.	With amount in full of the distributive share of the estate of Amos Kendall in the recovery against J. W. Lane, surety on error bond in the claim of Morse, Vail and Kendall against F. O. J. Smith, amount of net recovery being $1,779.28	815 53
Dec.	29th.	Cash received on account of Chase & Root notes	17,713 82
1877.			
Feb.	12th.	Cash received from Rees, Pierce & Co., Chicago	233 33
M'ch	26th.	Cash received from Rees, Pierce & Co., Chicago	532 80
"	30th.	Cash received on account of Chase & Root notes	350 00

* On the credit side of the executor's accounts appears the entry following:

1876.
June 30th. By payments on account Chicago property from Mar. 14 to June 19, 1876, per Rees, Pierce & Co. 521 02

July	19th.	Cash received from Rees, Pierce & Co.	$417	60
Sept.	8th.	" " " " being net rents of Chicago property, as per statement dated Sept. 4, 1877	374	25
Oct.	9th.	With cash from Rees, Pierce & Co. (rent)	225	00
"	29th.	" " " John Reamer, rent for stable, Oct. 29 to Oct. 29, 1877	20	00
Nov.	21st.	Cash from J. T. Armes, agent for Mr. West, rent of stable, 1 mo. in advance, from Nov. 20, 1877	19	00
Dec.	24th.	252 Stable rent	19	00
"	"	Cash from Rees, Pierce & Co.	413	28
1878.				
Jan.	22d.	With cash from Rees, Pierce & Co.	225	00
"	"	" rent of stable, 1 mo., from Jan. 20th, 1878	19	00
Feb.	19th.	With rent of stable, 1 mo., from Feb. 20th, 1878	19	00
"	"	Cash from Rees, Pierce & Co.	256	00
May	20th.	Rent of stable, 1 mo., from date	19	00
Apr.	20th.	" " " "	19	00
June	15th.	Cash from Rees, Pierce & Co.	332	36
"	24th.	Stable rent from May 20 to May 31	7	00
Sept.	10th.	Cash from Rees, Pierce & Co., Chicago	240	45
"	"	With stable rent	5	00
Oct.	3d.	" draft from Rees, Pierce & Co., Chicago, rent for Sept.	260	00
Nov.	13th.	With second (2d) dividend from Jay Cooke & Co., b'kr'pts	35	50
"	14th.	Draft from Rees, Pierce & Co., Chicago rents	256	00
Dec.	6th.	Rent of stable	16	66
"	"	Chicago rent	260	00
1879.				
Jan.	11th.	With rent from Rees, Pierce & Co., Chicago	245	00
		With rent of stable, 1 mo., to Jan. 4	15	00
Feb.	7th.	" " from Rees, Pierce & Co., Chicago	248	15
"	"	Stable rent from Senator Allison	15	00
"	19th.	With cash for sale of claims *vs.* Jay Cooke & Co. estate	300	00
M'ch	8th.	With rent from Rees, Pierce & Co.	253	00
		253 With stable rent, 1 mo., to M'ch 4th	15	00
Apr'l	10th.	" rent from Rees, Pierce & Co.	260	00
		With rent of stable to Apr'l 4th	15	00
May	9th.	" " from Rees, Pierce & Co.	170	00
		" " of stable	15	00
Aug.	20th.	" " " " from Sen. Allison for mo. end'g June 4th, 1879	15	00
		With rent of stable from Sen. Allison for mo. end'g July 4th, 1879	15	00

		With Chicago rents from Rees, Pierce & Co.	$244 05
Sept.	6th.	With Chicago rents from Rees, Pierce & Co.	266 66
Oct.	"	With Chicago rents from Rees, Pierce & Co.	266 66
Nov.	7.	With Chicago rents from Rees, Pierce & Co.	266 66
Dec.	8th.	With Chicago rents from Rees, Pierce & Co.	240 00
		With draft, proceeds of Chicago property	33,370 88

2. That in said accounts the said executors charged themselves with assets as follows:

In 1st account, approved and passed Jan. 28, 1871, with	$221,396 40
" 2d account, approved and passed Jan. 4, 1873, with	127,966 17
" 3d account, approved and passed Nov. 16, 1875, with	28,308 62
" 4th account, approved and passed Jan. 9, 1880, with	62,063 77
In all, with	$439,734 96

3. That the said executors in said accounts claimed and were allowed commissions as follows:

		In said 1st account, 5 per cent. on $221,396.40	$11,069 82
254	"	" 2d account, 5 per cent. on $127,966.17	6,398 30
	"	" 3d " " " " * $12,308.62	615 43
		In said 4th account, 5 per cent. on $62,063.77	3,103 19
		In all	$21,186 74

4. That the said executors in one of their said accounts claimed and received for the following payments:

		1869.	
Nov.	22d.	By paid Mrs. J. Stickney 1 Camden & Amboy R. R. bond, Vou. 1	$1,000 00
"	"	By paid Mrs. J. Stickney 2 ($10,000) U. S. bonds, appraised at 1.13½	22,700 00
"	"	By paid Mrs. J. Stickney own note surrendered	16,037 57
		1870.	
Jan'y	21st.	By paid Mrs. J. Stickney cash surplus in distribution of bonds	251 82
"	"	By paid Mrs. J. Stickney U. S. 5.20 bonds, appraised at 1.13½	6,810 00
"	"	By paid Mrs. J. Stickney in furniture, at appraised value	701 95
July	11th.	By paid Mrs. J. Stickney cash (portion of sale of Kendall Green)	1,500 00

* The executors made no charge for commissions on an item of $16,000 appearing, Feb. 5, 1873, on the dr. side of this account.

1871.		
Jan. 16th. By paid Mrs. J. Stickney cash		$215 50
		$49,216 84

5. And that in other of said accounts the said executors claimed and received credit for the following distributions by them made to the said Mrs. Stickney, to wit: †

255 Between the date last above and January 3d, 1873, for a distribution of		29,444 24
Between January 3d, 1873, and January 3d, 1875, for a distribution of		6,334 34½
Between January 3d, 1875, and January 9th, 1880, for a distribution of	$6,131 62	
	7,752 07	
		13,883 69
Making an aggregate payment and distribution by the said executors to the said Mrs. Stickney, as per said accounts, of		$98,879 11
And exclusive both of the payment by "own note surrendered," as above	$16,037 57	
And of the payment in "furniture," as above, appraised at	1,500 00	
		17,537 57
A net payment and distribution of		$81,341 54

COMPLAINANT'S EXHIBIT No. 4

(Rec., p. 63, top) contains the inventory of the goods, chattels, and personal estate of William Stickney, deceased, returned, under oath, by Jeannie K. Stickney, his administratrix, to the supreme court of the District of Columbia, holding a special term for orphans' court business, on the 9th day of February, 1882, and the appraisement made, under oath, in said inventory of such goods, chattels, and personal estate by George E. Johnson and Benjamin P. Snyder, the appraisers, in that behalf appointed by the said court.

The said inventory shows assets, consisting mainly of furniture, glass, plate, paintings, pictures and engravings (the last three items being valued, in the aggregate, at $322), books, watch and chain, bonds, and stocks, appraised, in all, in the sum of		$24,195 50
256 The said inventory shows also money left by the deceased on deposit ($550.00), and collections made by his administratrix (including in such collections $3,038.80 on notes of T. R. Jones, $10,038.27 by sale under deed of trust on note of Thomas L. Hume, and $151.81, prior interest, and $10,533.21, subsequent interest, and also the principal on note of Geo. H. Plant), to the amount of		$24,655 59
Making in the aggregate the sum of		$48,851 09

† The items composing these distributions and the particular dates of distribution are omitted in the said accounts.

The said inventory shows also debts due to the estate of the decedent as follows:

Note of E. M. Stickney, of Anamosa, Iowa, for $1,500, due March 25–28, 1878.

Bal. account on agreement (marked "desperate" by the court) from Austin P. Brown, $3,000.

Bal. due on note of Thomas L. Hume, after above sale under deed of trust, $182.56.

Complainant's Exhibit No. 5 (Rec., p. 63, top) is as follows:

"Rec., Oct. 6th, 1879, of Wm. Stickney & R. C. Fox, executors, sixty-three $\frac{33}{100}$ dolls. in full of Chicago rent to date.
$63.33. JEANNIE K. STICKNEY.

Complainant's Exhibit No. 6 (Rec., p. 63, f. 147) is as follows:

COUNTER CHECK.

Int. rev. stamp, 2 cents.

No. —.

WASHINGTON, D. C., *July* 1, 1872.

JAY COOKE & Co., Bankers,

Washington.

Pay to Jeannie Stickney or bearer seventeen thousand one hundred & twenty-three .75 dollars.

WILLIAM STICKNEY,
ROBERT C. FOX, *Ex'rs.*

[Stamped:] Jay Cooke & Co., Washington, D. C., July 1, 1872.

$17,123.75.

And the check is unindorsed.

257 Complainant's Exhibit No. 7 (Rec., p. 65, top) shows that William Stickney, as secretary of the board of managers of the Columbia Institution for the Deaf and Dumb, received no salary from 1857 to December 31st, 1875, but from Jan. 1st, 1876, to Sept. 30th, 1881, a salary of $600 per annum, and, in all, of $3,450.00.

That William Stickney received salary from the Columbian College and from the university into which it was changed from July 22, 1871, to May 1, 1875 (1 yr. 10 mos. 10 days), 5 per cent. on rents and tuition fees collected, with yearly allowance $500 for clerk hire—

From May 31, 1873, to June 30, 1877, $1,800 per an., or	$7,350 00
" July 1, 1877, to Oct. 15, 1881, $600, " "	$1,975 00
	$9,325 00

That from the National Savings Bank he received as salary—

From	Feb. 1, 1872, to May 1, 1872, at rate of	$600	per an.,		$150 00
"	May 1, 1872, to Jan. 1, 1878, " "	$1,200	" "		6,800 00
"	Jan. 1, 1878, to Dec. 1, 1878, " "	$1,000	" "		917 67
"	Apr'l 1, 1881, to Oct. 13, 1888, " "	500	" "		267 50
					$8,135 17

That between May 1, 1887, and January 1, 1880, he received from the National Safe Deposit Company a salary of $50 per month, or, in all, of $1,600.00.

That as secretary of the Board of Indian Commissioners he received from the United States a salary—

From Jan. 1. 1876, to June 30, 1880 (4½ years), of $3,000 per an.	$13,500
From June 30, 1880, to June 30, 1881 (1 yr.) of $2,500 per an.	$2,500
	$16,000 00

258 Making (exclusive of salary received between July 22, 1871, and May 1, 1873, 1 year 10 months 10 days, as above) from July 22, 1871, to Oct. 15, 1881, 9 years 2 months 22 days, a total of $38,510.17.

Complainant's Exhibit No. 8 (Rec., p. 91) is contained in the letter of B. P. Snyder, which appears on page 53, ff. 53, 54, of the Record, though not marked there as an exhibit.

Complainant's Exhibit No. 9 is as follows:

"I hereby certify that I was the physician who attended Mr. Wm. Stickney in his last illness. I saw him first on October 9th, 1881; his death occurred early on the morning of October 13th.

The symptoms at first did not necessarily indicate danger, and it was not until a few hours before death that the fatal result seemed inevitable. From this time he failed with great rapidity. The announcement of the hopelessness of his case was not made to Mrs. Stickney or to Mr. Stickney until I was convinced of it myself, at an early hour (2 a. m.) of the morning of his death.

Nov. 4, 1882. W. W. JOHNSTON, *M. D.*"

Complainant's Exhibit No. 10 (Rec., pp. 91, 92) shows that where William Stickney for several years received $1,800 per annum on account of the law school he gave one-half of that amount to his brother for services rendered by the latter.

Complainant's Exhibit No. 11 (Rec., p. 97, f. 227) is as follows:

259 "DECEMBER 23D, 1879.

DEAR WILL: I wish 'Will' to have $1,000 of the Chicago payment for his Xmas gift. Please bring check for that amount

and the balance invest in my name as I have asked you to do with all other monies accruing from my inheritance.

Affectionately, JEANNIE."

S. S. HENKLE,
Counsel for Appellant-.
JOHN SELDEN,
Counsel for Appellee.

260 [Endorsed:] Sup. Court U. S. 1888, Oct. term. No. 243. Edward M. Stickney *et al.*, app'ts, *vs.* Jeannie K. Stickney. Stipulation and addition to record. Filed Jan. 10, 1889.

FILED.
APR 4 1889
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1888.

EDWARD M. STICKNEY, et al., Appellants,
vs.
JEANNIE K. STICKNEY.
No. 243.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF OF S. S. HENKLE FOR APPELLANTS.

JUDD & DETWEILER, LAW PRINTERS, 930 7TH STREET, N. W.

Supreme Court of the United States.

OCTOBER TERM, 1888.

EDWARD M. STICKNEY, *et al*, *Appellants*,
vs.
JEANNIE K. STICKNEY. } No. 243.

Appeal from the Supreme Court of the District of Columbia.

STATEMENT OF THE CASE.

William Stickney, died intestate in this City, October 13th, 1881, leaving the appellee, as his widow, but no children. He was possessed of quite a large personal and real estate.

His heirs at law were his brothers John N. Stickney, of Rockville, Connecticut, Thomas G. Stickney, of Bangor, Maine, Frank H. Stickney, of the District of Columbia, and the appellants, who are children and heirs of Moody Stickney, deceased, who was a brother of the said William Stickney.

The three living brothers of the deceased after his his death, at the earnest request of the widow, executed to her releases for all their interest in the estate of William Stickney. Two of the appellants were then minors, and the other two were adults. The minors could not release and the adults declined to.

Mrs. Stickney, in virtue of these releases, became the owner in her own right of three-fourths of her husband's estate absolutely, and had a right to dower in the remaining fourth of the realty and her distributive share in the personalty.

The appellee was appointed administratrix in March, 1882. She brought this bill in the court below, against the appellees alone, as heirs at law of her husband, seeking to recover as a creditor against the estate of the said Stickney a decree for $80,348.24, for which she claimed her husband was indebted to her for monies received by him from time to time from the estate of Amos Kendall, who was the father of appellee, and which monies belonged to her separate estate; and which she claims remained under the care and control of her husband, and was managed and invested by him in his own name.

She claims that nearly the whole of the real and personal estate left by her husband was purchased from her separate estate.

She does not seek to hold the property itself as belonging to her in equity as the *cestui que* trust of her trustee, but she seeks a decree against the estate of her husband as a creditor for the amount which she claims he appropriated from her separate estate to his own use.

The two adult defendants below answered the bill denying the equities claimed, pp. 25 to 29, Rec. They also claimed the benefit of the statute of limitations. The two minors answered by their guardian, ad litem, asking the court to protect their rights. See pp. 22, 23, Rec.

The case was referred to the auditor to ascertain and report to the court upon, and with the evidence before him:

1st. Whether the complainant be a creditor upon or entitled to repayment out of the estate of her deceased husband upon account of the matters set out in the bill, and, if so, to what amount. Pp. 29, 30, Rec.

The rest of the reference is immaterial to the case here.

The inquiries were directed without prejudice to any question upon the merits of the case.

The auditor took testimony which he reported, together with his findings, see Rec. 45 *et seq.* He finds that complainant is a creditor of the estate of her husband to the amount of $87,371.13, and that the statute of limitations is no bar to her claim. P. 49, Rec.

The defendants filed exceptions to the report which are found on pp. 99, 100, 101, Rec.

The case was heard before the special term, which decreed that the exceptions be overruled, and affirmed the auditor's report in all things. That the decedent was indebted to the complainant in the sum of $78,-371.13. That no portion of it has been paid. That the unappropriated balance of the personalty in the hands of the administratrix, to-wit, $32,202.08, be applied to the payment and the real estate was ordered to be sold to pay the balance. Rec. 101, 102.

From which decree the defendants appealed to the General Term. Rec. 103.

The decree of the General Term affirmed the decree of the Special Term in all things. (Rec., 103).

From which decree an appeal was taken to this court.

ASSIGNMENT OF ERRORS.

First. The Special Term erred in overruling the defendants exceptions to the auditor's report.

Second. In decreeing the complainant was a creditor of her husband.

Third. In decreeing payment out of the personalty and ordering the real estate to be sold to pay amount found by the auditor.

Fourth. In overruling the defence of the statute of limitations.

Fifth. The bill should have been dismissed for want of equity.

The court in General Term erred in not reversing the decree of the Special Term.

FACTS.

Some of the undisputed facts are:

First. Mr. Stickney and Mr. Fox, two of the sons-in-law of Mr. Kendall were his executors.

Second. As the money of the estate was distributable to the legatees, Mrs. Stickney from time to time gave her receipt to the executors for the money distributable to her, and Mr. Fox paid the money to Mr. Stickney.

Third. These payments were made to her husband with her knowledge and consent. At all events there is no pretence that she ever objected to it.

Fourth. These payments to the husband began January, 1870, and extended down to December, 1879, covering many intermediate payments to the husband. (See schedule A., pp. 50, 51, 52, Rec.)

Fifth. From the receipt of the first money by Mr. Stickney, January, 1870, down to his death in 1881, she never demanded the money or any accounting for it, or even enquired what had been done with or how it was used or invested.

Sixth. It is not pretended that he ever at any time consulted her, or asked her pleasure as to how the money or any part of it should be used or invested, or what should be done with either the principal or interest, or that he ever told her what he had done with it.

Seventh. From the time the monies came into his hands until his death, he used and invested them in real estate or loans, or in whatever way his judgment or inclination suggested as absolutely as though they were his own, and that he made no discrimination between his own money and that which came to him from his wife.

These undisputed facts show a complete turning over and surrender of the wife's separate personalty to the husband, to be used and managed by him for their joint benefit, without any expectation or purpose of holding him to an accounting as her trustee, and much less that she or he supposed or intended the relation of creditor and debtor existed between.

The truth about it doubtless is that she had the most implicit confidence in her husband's integrity and business capacity as had everybody else who knew

him. She confided also in his affection, and she was willing that he should take and use her money as he pleased, expecting if she survived him to have his estate.

There is nowhere the symptom of a contract relation between them, either express or implied.

SOME STATEMENTS THAT ARE DISPUTED.

Mrs. Stickney now claims that she supposed all the time that her husband was investing her money in her own name, and the auditor in his report, on p. 46 Rec. makes this astonishing statement:

"It will be seen, upon examination of the evidence taken in this reference, that there is no warrant for any presumption that the complainant assented to or acquiesced in the use or investment of her property by her husband, or that he undertook to reduce it to his possession and treat it as his own. On the contrary the proof shows that she intended to retain the apparent, as well as the real ownership, the nominal as well as the equitable right, and that he considered himself as her trustee and proclaimed himself as such."

What is the testimony to sustain this claim of Mrs. Stickney and this statement of the auditors?

A witness, Anna R. Jones, (pp. 77, 78 Rec.), says she lived with the Stickneys about three years as a member of the family. That on one occasion (p. 78) she entered the library while Mr. and Mrs. Stickney were conversing on the subject of the "Chicago" property. Mr. Stickney was sitting at his desk and Mrs. Stickney was sitting in an easy chair, "I heard Mrs. Stickney say to him, 'Now, Will, I want you to invest this money in my name.' Mr. Stickney looked at her but made no reply."

And that was all she heard. This was between November 1879 and 1880.

Mr. Stickney is charged in schedule A. p. 51. "Dec. 23d, 1879, from sale of Chicago property $7,770.89."

So if this fragment of a conversation proves anything, it is simply that Mrs. Stickney requested her husband to invest *this* money in her name. He did'nt promise to do it, but said nothing.

If any implication is to be drawn from this, it is that she knew that the other monies had not been invested in her name. This was the last of her money received by her husband, save some trifling sums.

Mrs. Stickney, p. 97., testifies that the letter found on pp. 114, 115, Rec., bearing date, Dec. 23d, 1879, is in her handwriting and was sent by her to her husband by a servant man. He says p. 98, that she found the letter in his desk at home; the desk was not locked.

This letter was objected to when offered as evidence Rec. 97.

The letter was clearly inadmissable, because it was not shown that Mr. Stickney ever received it. The servant by whom she says she sent it, was not called, nor was his absence accounted for; the servant or some one else might have put it in the drawer; she does say when she found it there. It is altogether too dubious for testimony.

But it is incompetent as a communication between husband and wife, and is excluded on the ground of public policy.

State *vs.* Buffington, 20 Kansas, 599.

On p. 96, at the foot, Mrs. Stickney says:

"I supposed my husband had made investments in my name, as I had requested him to do always when money was received."

On p. 97, Mrs. Stickney says:

"I was not then aware that my money had not been invested in my name. I had no suspicion that he had not obeyed my requests. At the times I had made them, he would sometimes smile and say that it would be all right."

This testimony is all incompetent upon the ground that conversations between husband and wife are excluded upon the ground of public policy. (1 Greenlf., 254, 334, 343).

The disability is not removed by Sec's 876 and 877, Rev. Stats., Dist. Columbia.

Holtzman *vs.* Wagner, 5 Mackey, 15.
Lucas Brooks, 18 Wall., at 452, 453.

The auditors report of the testimony does not show any objection to the testimony of Mrs. Stickney, as to these points quoted, but the fact is she was testifying under objections to her competency as to all of it, but the stenographer has failed to note it.

The objection to the competency of the witness or of the testimony may be made upon the hearing, or at any time if it be such incompetency as cannot be removed, as this is.

Doan *vs.* Glenn, 21 Wall., at 35;
York Express Co. *vs* Central R. R. Co., 3 Wall., at 113;
Shutte *vs.* Thompson, 15 Wall., at 160.

The exceptions, p. 99, show that objection was made at the time she testified to Mrs. Stickney, on the ground of competency.

Emily Jacobs *vs.* Hesler, 113 Mass., 157.

A wife testified before the auditor that she gave money of her separate estate to her husband, to invest for her in U. S. bonds, which he promised to do, but

did not do, but used the money in his business. The auditor reported the facts as above; if her testimony as to conversations between her husband and herself was competent, if not, then he found the fact to be that she placed the money in her husbands hands without any agreement, and that he used it in his business. The Supreme Court held the conversations incompetent. Mr. Justice Gray said:

"It must be deemed incompetent evidence as a conversation between husband and wife."

The order referring the case to the auditor contains this clause, viz:

"And the above inquiries are directed without any prejudice to any question upon the merits of the case." Rec, 30.

The testimony of Mrs. Stickney goes directly to the merits of the case, and if there were otherwise any doubt about our right to make the question on the hearing, or here it is clearly saved by this clause of the reference.

Mr. A. P. Brown, on p. 92, *et seq.*, says that Stickney made him many loans extending from 1869 down to his death. He generally advanced him money on accounts against the Government which he gave Stickney powers of attorney to collect. He would borrow a sum of money and make a payment or partial payment, and borrow it again; kept turning it over constantly. The highest he ever had at one time was $20,000. The account is stated on page 92 to 95. At the time some of these loans were made Stickney told witness the money belonged to his wife.

Mr. Plant, on p. 79, said to Mr. Stickney, "You are buying a good deal of property?" He replied, "I am buying in part for my wife and with her means.'

Witness asked him for a loan of $10,000. He told witness that he expected his wife would have the amount in a few days coming into her hands, and if she did he would let witness have it; which he afterwards did.

The testimony of these witnesses simply proves that Mr. Stickney was using some of his wife's money, and was doing it for her benefit as well as his own.

THE EVIDENCE DOES NOT SUSTAIN THE AUDITOR'S FINDING.

I believe I have fairly cited all the testimony which the auditor must have relied upon to sustain his finding:

"That there was no warrant for any presumption that the complainant assented to or acquiesced in the use or investment of her property by her husband, or that he undertook to reduce it to his possession, and treat it as his own. On the contrary the proof shows that she intended to retain the apparent as well as the real ownership, the nominal title as well as the equitable right, and that he considered himself her trustee and proclaimed himself as such."

After excluding Mrs. Stickney' stestimony, which is incompetent, what does the testimony show? Simply that Mrs. Jones heard Mrs. Stickney say, p. 78: "Now, Will, I want you to invest *this* (the Chicago money) in my name." And Brown and Plant say that Mr. Stickney told him he was using his wife's money in some of his investments.

In the face of the admitted facts shown by the Record the auditor's conclusion is absurd.

THE ATTEMPT TO MINIFY MR. STICKNEY.

There is a persistent effort to manify Mr. Stickney on the part of the appellee by attempting to show by her own testimony and that of her friends that about

all the means he ever had, except a salary of $1,200 which he got as a Government clerk before his marriage, was given him by her father in his lifetime, and by his misappropriation of his wife's money after her father's death.

Mr. Snyder, a most zealous friend of Mrs. Stickney (pp. 66 to 77, Rec.) after enumerating many investments Mr. Stickney had, is asked by Mr. Selden, on p. 75:

Q. "Where, if you know, did all the money come from in these transactions which you have explained?

A. "My understanding is, it was from the Kendall estate." The answer being objected to unless the witness state how he understood it, says: "I understood it from a general knowledge of the family."

Q. "Was your knowledge founded in any degree upon his private affairs?"

A. "No, it was a general understanding that Mr. Stickney was a poor man when I first knew him. I knew Mr. Kendall and most all the members of the family."

He admits on cross-examination that Mr. Stickney probably had real estate assessed for taxation at $47,000, at the time of Mr. Kendall's death, but says Stickney told him Mr. Kendall furnished it all.

The testimony of Mrs. Stickney is very similar upon this point.

The testimony shows that Mr. Kendall was for his day a very rich man, and that he was largely interest in the Telegraph in the beginning. Mr. Stickney was his private secretary, and Mr. Kendall had great faith in him. He was doubtless very useful to Mr. Kendall and assisted him in managing his affairs and Mr. Kendall may and probably did afford him oppertunities for making money.

The fact is that William Stickney during his life was one of the most widely known and highly esteemed gentlemen of this city; and his reputation for business capacity and integrity was scarcely second to that of any other man in the community. He was pre-eminently a Christian gentleman.

Thomas G. Stickney, a brother, (p. 35) testifies as to some of the positions held by Mr. Stickney, and the emoluments. On p. 36, he testifies that as early as 1864 or 1865, several years before the death of Mr. Kendall, the day before he sailed with his wife and Mr. Kendall for Europe he placed in witness's hands for safekeeping during his absence $73,000.

John N. Stickney, another brother, (p. 44) says the salaries from the different positions held by Mr. Stickney amounted to $6,000 per year, so that he was not the dependant the appellant would make him appear.

The appellants had no access to the books or papers of Mr. Stickney. All these, including his valuables in his box in the Safe Depesit, were taken possession of immediately after his death, and before she was appointed administratrix by Mr. Stickney, and the only means appellants have of knowing what personal property Mr. Stickney died possessed of are the returns which Mrs. Stickney had made to the court as administratrix.

Nor have they any means of showing how much of the money of the appellee which came into the hands of her husband was returned to her or used for her benefit.

True, the auditor finds the amount of Mr. Stickney's indebtedness to his wife at the time of his death, but he had no evidence to base it upon save the amounts which originally came into his hands. Mrs. Stickney's

testimony that she had received nothing but the $1,000, Christmas gift to her son, is incompetent and should have been excluded.

THE ESSENTIAL FACTS ESTABLISHED BY THE EVIDENCE.

1. Mr. Stickney and Mr. Fox were the executors of Amos Kendall.

2. As the money of the estate was ready to be distributed a check was made by the executors payable to Jeannie Stickney, or bearer, (See Ex. No. 6, p. 113 Rec., and p. 63), which was collected by her husband and placed to his own credit. Mrs. Stickney contemporaneously gave to the executors her receipt for the amount thus paid over.

3. The money was taken and used by her husband with her knowledge and consent.

4. During the twelve years that Mr. Stickney lived, after the receipt of the first money, Mrs. Stickney never required any accounting from him for her money, or any part of it.

5. That she never gave him any direction as to how to invest it, or even inquired how it had been used or invested.

6. That she never at any time intimated to him in any way that she required or expected him to account for or pay back to her the money he had received from the Kendall estate, or any part of it.

7. That from the time the first money came into his hands he used and invested and dealt with it in his own name, without consulting her or even telling her what he was doing with it.

8. That down to the time of his death she acquiesced in this without objection or complaint.

DO THE FOREGOING FACTS MAKE MRS. STICKNEY A CREDITOR OF HER HUSBAND'S ESTATE AS FOUND BY THE AUDITOR?

At common law all the personal property and money of the wife which was reduced to possession by the husband became absolutely his.

Tower's *vs.* Hagner, 3 Whart., at 36.
Kesner *vs.* Trigg, 98 U. S., at 54.

In equity, however, the wife might have a *separate estate* which was not subject to the control of the husband and of which she had the absolute *jus disponendi* as if she were *feme sole.* Id.

Caton *vs.* Rideout, 1 McNaughton and Gordon, at 600.

This *separate estate* was usually settled upon trustee for her use, but might be vested in herself without the intervention of trustees.

Hardy *et al. vs.* Van Harlingen, 7 O. S., 209.
Jones *vs.* Clifton, 101 U. S., at 229.

As to the control and disposal of the income of her *separate estate* she was as independent of the control of her husband as though she were *feme sole.*

Muller *vs.* Bayley *et al.*, 21 Gratt., 529.
Hardy *et al. vs.* Van Harlingen, 7 O. S., 209.

She might loan the income from her *separate* estate to her husband and take his note or bond for it, or she might give it to him. She might be a creditor of her husband, as to this, and enforce the obligation.

MARRIED WOMANS ACT.

The Married Womans Act is contained in Sec's 727 to 730 inclusive, Rev. Stats., Dist. Columbia.

SEC. 727. Makes the right of a married woman to her property, which she had at the time of marriage, or acquired during marriage in any other way than by gift or conveyance from her husband, as absolute as if she were unmarried, it shall not be subject to the disposal of the husband nor subject to his debts.

SEC. 728. She may convey, devise, or bequeath her property with like effect as if she were unmarried.

SEC. 729. She may contract with reference to her separate property as if she were unmarried.

SEC. 730. The husband shall not be liable upon any such contract, nor liable for any recovery against her, but execution may go against her sole and separate estate.

By this act the wife becomes the absolute owner of all her property, real and personal by operation of law, and her separate estate is no longer confined to the estate which was settled to her use by deed or devise, and she now has the *jus disponendi* of the principal as well as the income.

She may deal as to her separate property with all the world, including her husband, she may loan it, or give to her husband or anybody else without limit or restraint. So far the construction of these modern enabling acts is uniform.

As to what acts or facts will be construed into a gift or loan from the wife to the husband, there is some diversity in the decisions of the courts in the different States where these acts have been adopted.

The only cases cited by the auditor to sustain his conclusion that the use by the husband of his wife's money by her consent, without more, made him her trustee for the money, and made him or his estate liable to her as a debtor, are Johnston *vs.* Johnston, 7

Casey, 450; Gochenauer's estate, 11 Harris, 460, and Gravill *vs.* Moyer, 9 Wright, 530.

It will not be controverted but that the weight of authority in Pennsylvania sustains the auditor; but there are even there cases which do not.

In Nagle *vs.* Ingersoll, 7 Barr., 204, the court says:

"Unquestionably a married woman, having a separate estate, may give it to her husband, or agree that he may receive the rents and profits during coverture; *and if she permits him to receive the income, without complaint, it is evidence of her assent.*"

Powell *vs.* Hankey, 2 P. Wms., 83.
Pawlett *vs.* Delaval, 2 Ves., 663.
Pakes *vs.* White, 11 Ves., 225.
Towers *vs.* Hagner, 3 Whart., 57.

Towers *vs.* Hagner, 3 Whart., at 567, *supra*, says the court:

"According to the legal effect of the agreement between Towers and his wife, before marriage, Mrs. Towers continued the owner in equity of her estate as if no marriage had taken place. Her husband had no right whatever to her money nor to the rents and profits of her real estate. She had the right to dispose of them as she pleased, either by gift or loan as well to her husband as to a stranger; and that if lent to the former he was as much bound to repay her as the latter. If Captain Towers received any of her rents without her consent or authority he was bound to account for them; *but if he received them with her consent, without any complaint or objection being made, the presumption would be that they were a gift from her to him.* Earl Digby *vs.* Howard, 6 Eng. Com. Law Rep., 273."

McClinsey's appeal, 14 S. R., 65.

Here the husband received and used the rents of his wife's house. After his death the wife administered and claimed these rents against the estate.

The court held that a gift was presumed to the husband; citing Powell *vs.* Hankey, 2 P. Wms., 82. Clancey on Married Women, pp. 168, 199; Trustees Meth. Ep. Church *vs.* Jaques, 3 John., Chy., 77.

These decisions it is true were all prior to the modern enabling acts relating to married women, the first of which was passed in Pennsylvania in 1848. They applied to what was known as the *separate estate* of married women.

It was held in Pennsylvania and England and it is believed everywhere else that as to the *separate estate* of the married woman, where the deed of settlement gave her control of it, or of the income of it, her power of control and disposal of it was as complete and absolute as though she were *feme sole*. She might sell it, or loan it, or give it to strangers; and she might do the same with her husband.

The doctrine of the modern Pennsylvania cases since the married woman's acts is that if the husband uses his wife's separate estate with her knowledge and consent he is presumed without any further showing to be her trustee and accountable to her in his lifetime, and his estate after his death for the money.

I propose to show that this is the exception and not the rule.

THE DISTRICT OF COLUMBIA DERIVES ITS JURISPRUDENCE FROM MARYLAND.

Although the decisions of the courts of Maryland since the cession are not of binding obligation in the District they are of greater weight and authority than those of any other State, as the same system of jurisprudence is common to both, and they are divergent only where legislation since the cession has made differences.

Grover & Baker Sewing Machine Company *vs.* Radcliff, 63 Md., 496, says the court, at page 500:

"It has long since been the settled law of this State, that the wife may become a creditor of the husband in respect of money or property belonging to her as her separate estate *which the husband has received under an express promise at the time of repaying her. But if such money or other separate property has been received by the husband with the knowledge and acquiescence of the wife, without such express promise at the time, no implied assumpsit, either legal or equitable, will arise to support a claim against the husband or his estate.* The wife having the *jus disponendi* of her separate property, if she thinks proper to let her husband have it, or appropriate it without any express promise or agreement *at the time* to account for it, or repay her the amount so received or appropriated, she cannot afterwards set up a claim against the husband upon the footing of a creditor. In such case she is taken to have acquiesced in the appropriation of the fund for the common benefit of herself and husband, and for the benefit of the family. Edelin *vs.* Edelin, 1 Md., 415, 420. Hill *vs* Hill, 38 Md., 183, 185. Kuhn *vs* Stansfield, 28 Md., 210."

The Farmers and Mechanic's Bank of Baltimore *vs* Rebecca A. Jenkins, 65 Md., 245.

The husband collected and used the money of his wife and finally failed, and she claimed to be a creditor.

The husband and wife were both examined as witnesses. They both testified that he used her money with the understanding that it was to be returned to her.

He says, p. 250, "the understanding was, it was her property." "The understanding was, it was money in my hands, for which I was to be accountable."

"She did not consent that I should take them as my own."

Q. "Why did you not repay her these sums of money or invest them for her benefit?"

A. "Because I always considered that I had sufficient property to reimburse her at any time she might demand it."

The wife said she had requested him to invest her rents for her. "He generally attended to my business in this way, I depended on him intirely." They both said there was no express promise to repay.

The court says: "Now the relation of debtor and creditor may no doubt exist between husband and wife, growing out of the receipt by the husband of the wife's separate estate, under a promise made at the time to repay her or to invest the same for her use. Bowie *vs.* Stonestreet; 6 Md. 418. Kuhn *vs.* Stansfield; 28 Md. 210. Hill *vs.* Hill; 38 Md. 183."

At p. 249. "The burden of proof is upon Mrs. Jenkins, to show that this income from her separate estate was received by her husband under an agreement to repay her, or invest it for her use, and this we think the evidence failed to establish."

"A great deal is said in the testimony of both Mr and Mrs. Jenkins about a general understanding that the property belonged to Mrs. Jenkins and that Mr. Jenkins always considered himself accountable to her for the income thus received by him. But when the direct question is asked as to the terms of the agreement, and when and where it was made, the answer is always evasive and unsatisfactory."

Jenkins *vs* Middleton, 68 Md., 540, decided in 1888:

The husband used his wifes money in his business.

He failed, and the case was referred to the auditor's to report the debts to be paid out of the fund. The auditor reported that the wife of Middleton was a creditor to the amount of $11,481, and that she was entitled to recover her dividend upon that amount. And the court below affirmed the auditor's finding. The Court of Appeals reversed it; said that court:

"It is settled upon the soundest reasons, that if a man uses the money of his wife with her acquiescence, she does not acquire a claim against him or his estate, unless at the time of the receiving or using of the money he made her an express promise to repay it." "It is useless to agitate the question because it is the settled law of the court, not to speak of former decisions, it has recently been declared in Grover & Baker Sewing Machine Co. *vs.* Radcliff, 63 Md., 496; Farmers and Mechanics Bank *vs.* Jenkins, 65 Md., 245. It is vain to argue that Middleton loaned the money to himself and his partner jointly. *He could not become a sole debtor or a joint debtor to his wife without an express promise.*"

If the Maryland doctrine is good law the appellee has no standing in court.

I now propose to show that the Maryland doctrine generally prevails in the other States and in England.

Monroe *vs.* May, Weil & Co., 9 Kansas, 318. The court held that where a wife *loans her husband's money upon an agreement that it shall be repaid* she becomes the creditor of the husband.

Logan *vs.* Hill, 19 Iowa, 492.

The agreed statement of facts was that the wife had money of her own separate estate which she had at marriage; that she advanced this money to her husband at several times; that it was not intended as a gift, nor did she surrender it as such, but in good

faith with the expectation and promise that it should be repaid to her, and afterwards the husband gave two notes for it. It was held that as against the heirs she was entitled to recover.

The court, Dillon J., on p. 498, says:

"We lay down the rule as fully warranted by the authorities that where the husband borrows the wife's *separate* money, and *promises to repay it*, equity, especially where the promise is reduced to writing, and the rights of creditors are not prejudiced or defeated will enforce the contract against him, or if he is deceased against his estate."

Citing many cases.

Emily Jacobs *vs.* John B. Hesler 113, Mass., 157.

The wife gave money of her separate estate to her husband as she claimed to invest for her in United States bonds, which he promised to do, but he used it in his business. She filed this bill against the administrator to recover the money, or to enforce the trust. The auditor reported the facts as above, if her testimony as to the conversations between her husband and herself were competent; if not, then he found that she placed it in her husband's hands without any agreement, and that he used it in his business.

The Supreme Court held that the conversation between the husband and wife was incompetent, and there was no other on that point.

Judge Gray said:

"It must be deemed incompetent evidence as a private conversation between husband and wife.

The evidence being laid out of the case, the only facts proved by competent testimony, found by the master are, that the money was the separate property of the wife, placed by her in her husband's hands, and afterwards used by him in his business. There is no proof on the one hand that she intended that it should

be or knew that it had been so used; nor on the other that he received it on an agreement or trust for her benefit, or that she during the six years that afterwards elapsed before his death, made any claim to it."

"Upon these facts, we are of the opinion the bill cannot be maintained. A husband and wife cannot make contracts with each other, and though he may doubtless be trustee for her, yet, when a wife with her own hands pays money of her separate estate to her husband, there is no presumption that he received it in trust for her, but the burden is on her to prove the fact.

"In the absence of such proof the money must be deemed to have been given to him with the intention that it should be applied to the use or benefit of either or both of them at his discretion."

This case is very nearly on all fours with the case at bar, and effectually disposes of the theory that Mr. Stickney held the money of the appellee as a trustee. All the reasoning of the Massachusetts case, applies with equal force to this case.

There is the testimony of the wife to conversations between herself and her husband held to be incompetent, and the committing of the money of her separate estate to the husband "without agreement or trust for her benefit."

Caton *vs.* Rideout, 1 McNaughton & Gordon, 597.

Mrs. Rideout had a separate estate in stocks in the hands of trustees. The dividends were paid into bank by the trustees to the credit at first of Mrs. Rideout, but afterwards, for years to the credit of her husband After his death she was executrix. On settling her accounts the master found that she should be charged with 555 l., 8 s., 10 d., being the balance in the testator's name at Childs, his bankers. This money was the balance of the last half yearly dividend of 600 l, upon the wife's stocks. She claimed to own this, but

the Lord Chancellor decided that it belonged to the estate of her husband.

The husband was one of the trustees.

The chancellor said:

"A wife having property settled for her separate use is entitled to deal with the money as she pleases. If she directly authorizes it to be paid to her husband he is entitled to receive it and she *can never recall it.* If the husband and wife, living together, have for a long time so dealt with the separate income of the wife as to show that they must have agreed that it should come into the hands of the husband to be used by him (of course for their joint purposes) that would amount to evidence of direction on her part that the separate income, which she otherwise would be entitled to, should be received by him.

"In the present case that was a sum of money which during the coverture became payable to the wife, and she undoubtedly had a right to direct the trustees to pay it into her hands or according to her special directions. Instead of doing this, the custom that prevailed for a number of years was that the money was received by the trustees or rather under their power of attorney by Messrs Currie, who by some authority, probably that of the trustees, paid it over to Messrs Childs, not to the account of the wife, but to the account of the husband, and it is proved that at all times the account at Messrs. Childs was under the control of the husband. It must have been under his legal control by being carried into an account in his name, and I assume also that it was under his control with the assent and concurrence of his wife, who had for a great number of years permitted him to deal with the fund, and never asserted her right to receive the separate benefit of it."

"The money being paid in under these circumstances, I consider precisely the same as if the wife had specifically authorized that mode of payment."

"The question then is, *was the money at Messrs. Childs in the hands of the husband, as husband,* or

as trustee. In the first place it ought not to have got into his single hands as trustee at all, but it ought to have been under the control of himself and the other trustees. Messrs. Currie received it for the husband, and then with the joint concurrence of both husband and wife paid it to the husband's separate account with Messrs. Childs, *the wife knowing it, and for years permitting them so to deal with it without any interruption on her part.* It appears to me then that this *payment was made to the husband, as husband, and not as trustee.*"

"The practice between the husband and wife is proper evidence to show acquiescence and concurrence."

See the many cases cited by the editor.

This case is also identical with the case at bar in the essential features of it. The husband was one of the trustees into whose hands the money came, and the trustees paid over the money to Messrs. Currie, who paid it into the bank to the credit of the husband. The money never went into the hands of the wife. There is no evidence that she receipted to the trustees for it, as Mrs. Stickney did in this case, but the presumption was that it went to the credit of her husband with her assent. This course of dealing ran through a series of years, as it did in our case for twelve years.

The chancellor held that from these facts it would be presumed that the wife intended the husband to have and control the money for their joint benefit and that he received the money as husband and not as trustee, and that the wife could not hold his estate to account for it.

If good law, it is conclusive of this case.

Muller *vs.* Bayley *et al.*, 21 Gratt., at 529, said the court of appeals:

"A wife who has an absolute separate estate with power to dispose of it as she pleases, and therefore with power to throw the proceeds of the sale into the sea, if she pleases, can surely devote it to the benefit of her husband, and to the payment of his individual debts. She can certainly give it to anybody in the world, but her husband, and why not to her husband also."

Hardy *et al. vs.* Van Harlingen, 7 O. S., 209.

The court held that where a married woman allows her husband to use her separate money, and invest it in his own name, the presumption is she intended a gift to him.

THE HUSBAND AS TRUSTEE.

The circumstances of this case all show that Mr. Stickney used the money of his wife as *husband* and not as *trustee*. As executor together with his co-executor he took the receipts of the wife for the monies, and the money was then paid over to him as husband with her knowledge and consent.

It is conceded that a husband may act as trustee for his wife, but it is where he expressly assumes so to act, and where, as such, he promises at the time he receives the money to account to her for it, or to invest it for her. In that case he, in his lifetime and after his death, his estate is liable to her for it.

Walker *vs.* Walker, 9 Wall., 743.
Jacobs *vs.* Hesler 113, Mass., *supra*.
Caton *vs.* Rideont, 1 McNaughton *vs.* Gordon, *supra*.

As to her separate property the wife is *feme sole*, and her husband has no more right to interfere with it than a stranger. The circumstances that would make a stranger her trustee would vest a trust in the

husband. Being *feme sole quoad* her separate property the wife needs no trustee.

THE WIFE SUI JURIS.

Since the enabling statutes, the wife is *sui juris* as to her separate property, and may sue in her own name any one who interfers with it, even her husband. She may loan her separate money to her husband and enforce payment as against a stranger.

Emerson *vs.* Clayton, 32 Ill., at 498.
Strong *vs.* Skinner, 4 Barb., at 555.
Monroe *vs.* May, 9 Kan., 473.
Drury *vs.* Briscoe, 42 Md., 155.
Logan *vs.* Hall, 19 Ia., 491.
Wells Sep. Pro. Mar. Wom., Sec. 373 *et seq.*, and cases cited.

STATUTE OF LIMITATIONS.

The disability of a married woman being removed, the statute of limitations so far as her separate property is concerned, applies to her as well as to any other person.

Brown *vs.* Cozens, 51 Me., at 305, 306, 307.
Castner *vs* Walrod, 83 Ill., 176.
Wilson *vs.* Wilson, 36 Cal., at 450 *et seq.*
Wells Sep. Pro. Mar. Wom., Sec. 658.

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